

CLEAR COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 26

HENRY ANTON PFISTER, PETITIONER,

vs.

NORTHERN ILLINOIS FINANCE CORPORATION,
ALGONQUIN STATE BANK, HARTMAN AND SON,
ET AL.

No. 27

HENRY ANTON PFISTER, PETITIONER,

vs.

NORTHERN ILLINOIS FINANCE CORPORATION,
ALGONQUIN STATE BANK, HARTMAN AND SON,
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 17, 1942.

CERTIORARI GRANTED MARCH 30, 1942.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941:

No.

IN THE MATTER OF HENRY ANTON PFISTER, DEBTOR.

HENRY ANTON PFISTER,

Petitioner,

vs.

NORTHERN ILLINOIS FINANCE CORPORATION,

ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD.

**UNITED STATES CIRCUIT COURT
OF APPEALS**

FOR THE SEVENTH CIRCUIT.

Nos. 7631 and 7632..

In the Matter of Henry Anton Pfister, Debtor.

HENRY ANTON PFISTER, APPELLANT,

VS.

**NORTHERN ILLINOIS FINANCE CORPORATION
ET AL., APPELLEES.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.**

Filed March 24, 1941. Kenneth J. Carrick, Clerk.

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**UNITED STATES CIRCUIT COURT
OF APPEALS**

FOR THE SEVENTH CIRCUIT.

Nos. 7631 and 7632.

In the Matter of Henry Anton Pfister, Farmer Debtor.

**HENRY ANTON PFISTER, FARMER DEBTOR,
APPELLANT,**

VS.

**NORTHERN ILLINOIS FINANCE CORPORATION,
ALGONQUIN STATE BANK AND HARTMAN
AND SON, APPELLEES.**

**HENRY ANTON PFISTER, FARMER DEBTOR,
APPELLANT,**

VS.

**ALGONQUIN STATE BANK, NORTHERN ILLINOIS
FINANCE CORPORATION, HARTMAN AND
SON, E. C. HOOK, AND EMIL GEEST,
APPELLEES.**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION (CHICAGO).**

**CONSOLIDATED FOR THE PURPOSES OF APPEAL BY ORDER OF
THE DISTRICT COURT.**

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable William H. Holly, District Judge of the United States for the Northern District of Illinois, on 16th day of December, in the year of our Lord one thousand nine hundred and forty, being one of the days of the regular December Term of said Court, begun Monday, the 16th day of December, and of our Independence the 165th year.

Present: Honorable William H. Holly, William H. McDonnell, U. S. Marshal, Hoyt King, Clerk.

The Following Are Entries From Clerk's Docket In Case Number 72557:

ENTRIES ON CLERK'S BANKRUPTCY DOCKET.

Henry Anton Pfister, Farmer Debtor, Case No. 72557, Section 75.

February 28, 1940.. Petition and schedules filed 9:40 A. M.

February 29, 1940. Order of general reference to William T. Kirby as conciliation commissioner. Holly, Judge.

March 5, 1940. Recommendation of conciliation commissioner recommending approval of petition under 75 filed.

March 28, 1940. Motion of debtor to approve petition as properly filed, filed.

April 25, 1940. Petition of debtor filed under section 75 (s) approved as properly filed, Holly J.

May 23, 1940. Notice filed.

May 23, 1940. Motion of E. C. Hook filed.

May 24, 1940. Motion to strike by Henry Anton Pfister filed.

May 24, 1940. On call. No order—No order on motion to vacate order of April 25th, 1940. Holly J.

July 19, 1940. Amendment to petition under Section 75s filed.

July 20, 1940. Order of adjudication under Section 75s entered by referee Givler on July 20, 1940, filed.

September 17, 1940. Leave to debtor to file petition for restraining order instant and petition set for hearing December 19, 1940. Holly, J.

September 17, 1940. Petition for restraining order filed.

September 19, 1940. Affidavit of J. E. Dazey filed.

September 19, 1940. Notice filed.

September 19, 1940. Answer to petition for emergency restraining order filed.

September 19, 1940. Argument heard on petition of debtor to restrain a certain sale and said petition denied. Holly, J.

October 10, 1940. Application of Culver and Mendelson, 160 North LaSalle Street as association counsel and

4 *Entries on Clerk's Bankruptcy Docket*

Elmer McClain, Lima, Ohio, as chief counsel for debtor filed.

October 15, 1940. Certificate of referee re proceeds under 75 filed.

October 17, 1940. Special appearances and motion to dismiss regarding order of September 7, 1940, filed.

October 17, 1940. Answer to petition for review of the three orders of September 7, 1940, so far as same applies to the order of September 30, 1940, filed.

November 12, 1940. Petition of debtor for review set for hearing December 2, 1940. Holly.

November 30, 1940. Certificate of W. M. Givler filed.

November 30, 1940. Referee's opinion and decision for rehearing and amendment thereto of the court order of August 13, 1940, filed.

November 30, 1940. Order overruling motion of Northern Illinois Finance Company et al. filed.

December 2, 1940. Petition of debtor for review continued to December 7, 1940. Holly, J.

December 16, 1940. Notice and proof of service filed.

December 16, 1940. Petition for review of order of Referee Givler entered August 13, 1940, dismissed. Draft. Petition for review of order of referee Givler entered September 30, 1940, dismissed. Draft. Holly, J.

December 30, 1940. Motion and affidavit filed.

December 30, 1940. Motion of farmer debtor to vacate orders of December 16, 1940, and to reconsider petition for review of farmer debtor entered and continued to January 13, 1941. Holly, J.

January 13, 1941. Motion of debtor to vacate orders of December 16, 1940, and for rehearing taken under advisement. Holly, J.

January 14, 1941. Memorandum of Judge Holly filed.

January 14, 1941. Motion of debtor to vacate orders entered December 16, 1940, denied. Holly, J.

January 14, 1941. Notice of appeal of farmer debtor filed.

January 14, 1941. Bond on appeal filed.

January 14, 1941. Notice of appeal of Henry A. Pfister filed.

January 14, 1941. Bond on appeal filed.

January 20, 1941. Notice filed.

January 20, 1941. Order consolidating pending appeals in the above entitled cause. Draft. Holly, J.

January 20, 1941. Motion for Consolidation filed.

January 22, 1941. Notice filed.

January 22, 1941. Petition of Henry A. Pfister filed.

January 22, 1941. No order, Holly, J.

February 3, 1941. Designation of Contents of Record and Statement of Points filed.

February 5, 1941. Notice filed.

February 5, 1941. Petition of Henry A. Pfister filed.

February 5, 1941. Leave Debtor to withdraw certain documents until February 16, 1941, to prepare copies for trial court record on appeal. Draft. Holly, J.

February 12, 1941. Further designation of contents of Record on appeal filed.

6. *E Entries on Conciliation Commissioner's Docket*

The Following Are Entries from Conciliation Commissioner's Docket No. 72557.

In the Matter of Henry Anton Pfister, Farmer. Claim Docket Page 120 Judge Holly. No. 72557.
Farmer

Attorneys for Debtor: Robert E. Coulson, 404 Citizens Bank Bldg., Waukegan, Illinois, and J. E. Dazey, Findlay, Illinois.

March 1, 1940. Memorandum of order of general reference to William T. Kirby as Conciliation Commissioner filed.

March 1, 1940. Petition and Schedules (Sec. 75) filed.

March 4, 1940. Recommendation filed.

May 1, 1940. Memorandum of petition of debtor filed under Sec. 75 S. approved as properly filed.

May 23, 1940. Debtor's Inventory filed.

May 31, 1940. Notice of first meeting of creditors filed; proof of service.

June 3, 1940. Affidavit of mailing notice of first meeting of creditors filed.

June 6, 1940. Certificate of publication of notice of first meeting of creditors filed.

June 7, 1940. Proof of claim of National Discount Corporation for \$230.75 for secured debt filed.

June 12, 1940. Proof of prior claim for taxes of County Treasurer and Ex-officio County Collector of the County of Lake, Illinois, in the amount of \$1,028.32 filed.

June 29, 1940. Written proposal by debtor to creditors filed.

June 29, 1940. Proof of debt of E. C. Hook in the amount of \$9,758.73 filed.

Entries on Conciliation Commissioner's Docket 7

June 29, 1940. First meeting of creditors. Bankrupt present, sworn and examined. Summary of Bankrupt's examination filed. Motion by E. C. Hook, creditor, to dismiss petition as to sections A to R. Rejection of creditors of proposal, rule on debtor to file counter-proposal. Motion by three creditors for the appointment of a Receiver. Motion that debtor be prevented by order of Referee from removing soil or personal property from farm with the exception of milk, eggs and poultry and that he hold funds received from such sales subject to the order of Court (Dft). Hearing on all motions continued to July 9, 1940, at 10:00 o'clock A. M.

July 5, 1940. Proof of debt of Ralph Herschberger d. b. a. Hershberger Implement Store in the amount of \$96.06 filed.

July 6, 1940. Proof of debt of Emil Geest in the amount of \$6,030.82 filed.

July 9, 1940. Second meeting of creditors held. Motion by E. C. Hook, creditor, to dismiss petition as to Sections A to R heard and allowed. Debtor given fifteen days to file amended petition. Motion by three creditors for appointment of Trustee heard and continued. Further adjourned meeting of creditors continued to July 25, 1940, at 10:00 o'clock A. M. (D. S. T.) (Dft).

July 13, 1940. Proof of debt of Algonquin State Bank in the amount of \$848.00 filed.

July 17, 1940. Secured proof of debt of Hartman and Son in the amount of \$470.00 filed.

July 18, 1940. Secured proof of debt of Northern Illinois Finance Corporation in the amount of \$925.80 filed.

July 23, 1940. Amendment of petition under Section 75 S. filed by debtor.

July 23, 1940. Order of adjudication under Section 75 S and reference to Commissioner.

July 25, 1940. Motion for appointment of Trustee withdrawn. Motion by debtor that appraisers be appointed, and his exemptions set off to him. Motion allowed. Appraisers Louis I. Behm, Grayslake, Illinois; Vernon Rosenthal, Waukegan, Illinois; Frank Green, c/o First National Bank, Woodstock, Illinois, appointed; appraisers' fees set at \$10.00 per diem. Report of appraisers to be filed in five days from date. Exemptions to be set off by Commissioner by August 3, 1940. Leave granted National Discount Corporation, Algonquin State Bank, Northern Illinois Finance Company and Hartman and Sons to file petitions for reclamation and/or for sale of personal property by August 10, 1940 under Sub. Sec. S, paragraph 2. Motion granted. Motion by debtor for hearing on exemptions and all other motions set for hearing August 13, 1940, at 10:00 o'clock A. M. (Daylight Saving Time).

July 25, 1940. Notice of appointment to Appraisers filed.

July 31, 1940. Oath and report of appraisers filed.

August 2, 1940. Commissioner's report of exempted property filed.

August 7, 1940. Petition of Hartman and Son for Reclamation of personal property filed.

August 7, 1940. Petition of Algonquin State Bank for Reclamation of personal property filed.

August 8, 1940. Petition of National Discount Corporation for Reclamation of personal property filed.

August 10, 1940. Petition of Northern Illinois Finance Corporation for Reclamation of personal property filed.

August 10, 1940. Petition of debtor for an order fixing amount of rent for encumbered real estate and personal property.

August 13, 1940. On motion of claimants present, all claims on file as of this date allowed for their respective amounts as filed (Dft). Leave given Hartman and Son to substitute copies of original notes. Motion by E. C. Hook, Algonquin State Bank and Northern Illinois Finance Company that the rent of the farm and personal property be set at the sum of \$1,625.00 for the first year, \$2,125.00 for the second year and \$2,625.00 for the third year, payable in semi-annual instalments, the first payment to be due and payable October 28, 1940. In addition debtor is to pay \$1,625.00 the first year on the principal amount of both secured and unsecured claims (as their interests may appear) in quarterly instalments; \$2,125.00 the second year in quarterly instalments and \$2,625.00 the third year in quarterly instalments. The payment of the first quarterly instalment of 1940 is hereby extended to August 28, 1940. Hearing on motion; motion allowed as per order (Dft). Objection by debtor, hearing thereon and objection overruled. Motion by E. C. Hook and Emil Geest that the buildings be insured for fire and windstorm to their full insurable value, the insurance to be secured by Joseph N. Sikes in standard stock insurance companies, and that he be reimbursed out of the first rents received in proportion to their respective

interests. Hearing on Reclamation Petition and stipulations by the debtor and each of the following claimants: Hartman and Son, Northern Illinois Finance Company and the Algonquin State Bank that the personal property described in the petition is perishable within the meaning of paragraph No. 2, SubSec. S. of Sec. 75 of the Bankruptcy Act; it is further stipulated that the property described in the Reclamation Petition is not at this time claimed by debtor as exempted property. Hearing on all further motions and petitions continued to August 30, 1940, at 10:00 o'clock A. M. (D. S. T.).

August 13, 1940. Order approving appraiser's report filed.

August 13, 1940. Order setting aside debtor's exemptions filed.

August 30, 1940. Hearing on all above matters continued to September 7th at 10:00 o'clock A. M. (D. S. T.).

September 3, 1940. Secured proof of debt of Michael H. O'Boyle in the amount of \$432.76 filed.

September 7, 1940. Further hearing had and petitions of Algonquin State Bank, Hartman and Son and Northern Illinois Finance Corporation filed praying for order authorizing sale of certain cattle contained in conditional sales contract and chattel mortgage as perishable property; prayer of petitions granted as per order (Dft).

September 16, 1940. Petition for rehearing by Commissioner of order dated August 13, 1940, filed.

September 20, 1940. Motion by Robert E. Coulson, one of the attorneys for debtor, to withdraw his appear-

ance as attorney; proof of service of notice on debtor and his attorneys filed; motion granted as per order (Dft).

September 20, 1940. Petition for rehearing of order of September 7, 1940, filed and set for hearing September 26, 1940, at 9:30 A. M. (D. S. T.).

September 23, 1940. Amendments to petitions for rehearing of orders of September 7, 1940, and August 13, 1940.

September 26, 1940. Reply of debtor to answer to petition for rehearing of order of September 7, 1940, filed. Notice of amendment by interlineation of above petition and amendment; proof of service.

September 26, 1940. Answer of Algonquin State Bank, Hartman and Son and Northern Illinois Finance Corporation to petition for rehearing of order of September 7, 1940 filed. Leave granted debtor to file affidavit in answer to answer aforesaid. Hearing on petition for rehearing of order of September 7, 1940, had. Motion by E. C. Hook and Emil Geest, Algonquin State Bank, Hartman and Son and Northern Illinois Finance Corporation for leave to file answer to petition for rehearing of order of August 13, 1940, within fifteen days; leave granted. It was stipulated and agreed in the presence of petitioner and farmer debtor present in person that he is now represented by Culver and Mendelson, attorneys, 160 No. La Salle Street, Chicago, Illinois; that any notice of any matters with reference to said proceeding served upon Culver and Mendelson shall be a complete and legal service on him personally. That Elmer McClain, attorney, Lima, Ohio, also represents debtor.

On motion of all parties present, sale of personalty continued to October 15, 1940, at 10:00 o'clock A. M.

September 30, 1940. Commissioner's opinion and decision on petition for rehearing of order of September 7, 1940. Rehearing denied as per order (Dft). (see opinion).

October 1, 1940. Appearance of Walter A. Rice, attorney for National Discount Corporation, filed.

October 3, 1940. Motions by three creditors to strike petition for rehearing of order of August 13, 1940, filed.

October 9, 1940. Petition for review of three orders of September 7, 1940, and order of September 30, 1940, filed.

October 11, 1940. Answer of E. C. Hook and Emil Geest, creditors to the petition of said debtor for rehearing of the order entered herein on August 13, 1940, which petition was filed on September 16, 1940, and the amendment to said petition filed on September 23, 1940.

October 12, 1940. Certificate of Commissioner certifying certain questions to District Court Judges filed. Instruments sent to Clerk with certification.

October 14, 1940. Counter affidavit to that of U. G. Ward in reply to answer of three creditors which reply was filed as of September 26, 1940, filed.

October 14, 1940. Amended answer to amendment by interlineation of petition and amendment for rehearing of orders of September 7, 1940, filed. Notice and affidavit of service filed.

Original affidavit of service of copy of order filed.

November 28, 1940. Further hearing had; motion by creditors E. C. Hook and Emil Geest for leave to amend the answer of October 11, 1940, on its face by adding paragraph 13B. Leave granted and amendment made. Motion by three creditors to withdraw motion No. 1 of October 3, 1940; leave granted. Hearing on Motion No. 2 of October 3, 1940, of three creditors to strike petition for rehearing of order of August 13, 1940, arguments heard; and motion overruled. Hearing had on petition and amendments for rehearing of order of August 13, 1940, and answers filed to such petition and amendments thereto, arguments heard and entire proceeding considered. Petition for rehearing and amendment thereto denied. Petition filed for review of order dated August 13, 1940. Hearing on petition; prayer of petition denied as per order.

November 28, 1940. Commissioner's opinion and decision on petition for rehearing and amendment thereto of order of August 13, 1940, filed as per order. (Dft). Certificate of Commissioner certifying all aforesaid proceedings set for hearing on December 2, 1940, at 10:00 A. M. before Judge Holly, Chicago, Illinois.

November 30, 1940. Petition for review of order of November 28, 1940, denying motion of three creditors filed October 3, 1940:

December 20, 1940. Memorandum of motion before Judge Holly re: petition for review of order entered August 13, 1940, and September 30, 1940. Petitions dismissed.

In the District Court of the United States, Northern District of Illinois, Eastern Division. Henry Anton Pfister, Debtor. No. 72557.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition & Schedules in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 28th day of February, A. D. 1940.

**FARMER DEBTOR'S PETITION UNDER SECTION
75 (a) TO (r) AND SCHEDULES.**

(Filed February 28, 1940, in District Court.)

For Composition or Extension Under Section 75, Act of August 28, 1935, of the National Bankruptcy Act, including Subsection (s), and amendments thereto.

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division.

The Petition of Henry Anton Pfister of Prairie View, in the County of Lake, Northern District, State of Illinois, Farmer and is actively engaged in the raising of grain, livestock, poultry, and dairy products.

Respectfully Represents: That he has had his principal place of business on farm for the greater portion of six months next immediately preceding the filing of this petition at farm near Prairie View, Illinois, within said judicial district; that he is insolvent (or unable to meet his debts as they mature); and that he desires to effect a composition or an extension of time to pay his debts under Section 74 of the Bankruptcy Act.

That the schedule hereto annexed, marked A (1, 2, 3, 4, 5), and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked B (1, 2, 3, 4, 5, 6), and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore your Petitioner Prays that his petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

Henry Anton Pfister,
Debtor.

(Duly Verified.)

Schedule A—Statement of All Debts of Bankrupt.

Schedule A-1. Statement of all Creditors to Whom
Priority is Secured by the Act.

b. Taxes due and owing to

- | | |
|--|----------|
| (1) The United States. | None. |
| (2) The State of Illinois, and the County
of Lake. | \$500.00 |
| (3) The county, district or municipality of
_____, State of _____ | None |

c.

- | | |
|---|-------|
| (1) Debts owing to any person, including
the United States, who by the laws of the United
States is entitled to priority. | None. |
|---|-------|

(2) Rent owing to a landlord who is entitled to priority by the laws of the State of _____, accrued within three months before filing the petition, for actual use and occupancy. None.

Total, \$500.00

Schedule A-2. Creditors Holding Securities.

	Value of Securities	Amount Due or Claimed
Joseph N. Silkes, Trustee, Waukegan, Lake County, Illinois.		

A note in the sum of Eight Thousand Dollars (\$8,000.00) dated the 23rd day of September, A. D. 1936, due in three years after date, bearing six per cent until maturity, and seven per cent thereafter, interest payable semi-annually.

Said note is secured by a trust deed, which is recorded in Book 573 of mortgages, on page 178 in the Circuit Clerk's office of Lake County, Illinois, and is a lien on the following described real estate to-wit:

That part of the Southeast Quarter of Section Twenty (20), Township Forty-three (43) North, Range Eleven (11) East of the Third Principal Meridian, bounded and described as follows, Beginning at a point in the South boundary line of said Section, One (1) Chain West from the Southeast corner of said Section, thence North, parallel to the East line of said Section, Twenty-five (25) Chains; thence West to the West line of the

East half of said Southeast quarter; thence South, along the West line of said East half, Twenty-five (25) Chains, to the South boundary line of said Section; thence East, along said South boundary line, to the place of beginning.

Also the following described real estate, to-wit: Beginning at the southeast corner of the West half of the Southeast Quarter of Section Twenty (20), Township Forty-three (43), North, Range Eleven (11) East of the Third Principal Meridian, thence North on said East line, Forty-three (43) Chains and Twenty-four (24) Links; thence West parallel with Section line Nine (9) Chains and Twenty-five (25) Links; thence South, parallel with the east line of the West half of the Southeast Quarter of said Section, Forty-three (43) Chains and Twenty-four (24) Links; to the South Section Line; thence East Nine (9) Chains and Twenty-five (25) Links, to the place of beginning.

Said trust deed at this time is being foreclosed in the Circuit Court of Lake County, Illinois, Docket number in the Circuit Clerk's office is 41,356. \$16,000.00 \$8,000.00

Emil Geest, Prairie View, Illinois.

A judgment by confession in the Circuit Court of Lake County, Illinois, Docket number is 36,982. The amount of said judgment is \$5,703.85.

1.00 5,703.85

Michael H. O'Boyle, Deerfield, Illinois.

A judgment by confession in the Circuit Court of Lake County, Illinois. Docket number is 39,814. The amount of said judgment is \$432.56.

1.00 432.56

Northern Illinois Finance Corporation, a corporation of DeKalb, Illinois.

A conditional sales contract in the sum of \$1,100.00, secured by certain livestock, which is fully described in said sales contract.

2,000.00 1,100.00

Algonquin State Bank, a corporation of Algonquin, Illinois.

A conditional sales contract in the sum of \$870.00, secured by certain livestock, which is fully described in said sales contract.

2,000.00 870.00

The above conditional sales contracts cover the same property in part.

National Discount Credit Corporation, Waukegan, Illinois.

A sales contract in the sum of \$258.00, secured by one 1937 four-door sedan Oldsmobile Automobile.

275.00 258.00

Total, \$16,364.41

Schedule A-3. Creditors Whose Claims Are Unsecured.

Hartman & Son, a co-partnership, Hampshire, Illinois.

A note in the sum of \$470.00 \$470.00

Herschburger Implements, a copartnership, Prairie View, Illinois. Open Account. 90.00

George B. Umbdenstock, Prairie View, Illinois, open account, 80.00

Total, \$640.00

Schedule A-4. Liabilities on Notes or Bills Discounted
Which Ought to be Paid by the Drawers, Makers,
Acceptors, or Indorsers.

None.

Schedule A-5. Accommodation Paper

None.

Oath To Schedule A (Duly Verified).

Schedule B.—Statement of All property of Bankrupt.

Schedule B-1. Real Estate.

Estimated
value of
debtor's
interest.

See Schedule A-2 for description. Estimate
value of debtor's

\$8,000.00

Schedule B-2. Personal Property.

A. Cash on hand.

None.

B. Negotiable and non-negotiable instru-
ments and securities of any description, includ-
ing stocks in incorporated companies, interests
in joint stock companies, and the like (each to be
set out separately).

None.

C. Stock in trade, in business of , at
of the value of

None.

D. Household goods and furniture, house-
hold stores, wearing apparel and ornaments of the
person:

5 beds and bedding, \$25.00; 1 cook stove, \$5.00;
1 heating stove, \$5.00; 1 set of dishes, \$5.00; 1 set
of kitchen utensils, \$5.00; 3 rugs, \$15.00; 6 chairs,
\$5.00; 4 rocking chairs, \$5.00; 1 sideboard, \$5.00;
1 davenport, \$5.00; 1 sewing machine, \$5.00; 1
radio, \$5.00; 3 dressers, \$15.00; 1 set of garden
tools, \$2.00

\$107.00

E. Books, prints and pictures.

None.

F. Horses, cows, sheep, and other animals
(with number of each)

1 black horse, \$35.00; 1 black horse, \$35.00;
1 black horse, \$20.00; 4 yearling heifers, \$60.00;
20 dairy cows and 1 bull, \$2,000.00, 5 brood sows,
\$40.00; 15 pigs, \$20.00; 130 hens, \$50.00; (\$2,260.00)

All of the last described property, except 4 year-
ling heifers, 5 brood sows, 15 pigs, and 130 hens,
are included in the two conditional sales contracts
set out on schedule A-2, leaving property to the
value of \$170.00 not encumbered; and the equity
over and above the conditional sale contracts in
the property therein described is \$1.00, making
a total of exempt property the sum of

171.00

G. Automobiles and other vehicles

One 1937 four-door sedan Oldsmobile Auto-
mobile \$275.00, encumbered \$258.00, equity \$17.00.
(See schedule A2); 2 farm wagons, \$10.00.

27.00

H. Farming stock and implements of hus-
bandry.

None.

I. Shipping, and shares in vessels

None.

J. Machinery, fixtures, apparatus, and tools
used in business, with the place where each is
situated.

One 1927 tractor, plow, disc, \$50.00; 1 corn
planter, \$5.00; 1 wheat drill, \$5.00; 2 old har-
rows, \$5.00; 1 walking plow, \$1.00; 1 riding plow,
\$5.00; 1 set of work harness, \$5.00; 1 hay rake,
\$3.00; 1 hay loader, 1927, \$5.00; 1 manure spreader.
1930, \$10.00

94.00

K. Patents, copyrights, and trademarks.

None.

L. Goods or personal property of any other
description, with the place where each is situated.

1 lot of ear corn, about 400 bushels, \$150.00;
6 tons of soy bean hay, \$30.00; 1 lot of shredded

fodder, \$10.00; 1 lot of ensilage, \$10.00; 100 bush-	
els of oats, \$30.00; 80 bushels of barley, \$35.00;	
1 lot of rye, \$5.00; 1 lot of wheat, \$5.00.	275.00

Total,	\$674.00
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Schedule B-3. Choses in Action.

A. Debts due petitioner on open account.	None.
B. Policies of insurance.	None.
C. Unliquidated claims of every nature, with their estimated value.	None.
D. Deposits of money in banking institu- tions and elsewhere.	None.

Schedule B-4. Property in Reversion, Remainder, or Ex-
pectancy, Including Property Held in Trust for the Debtor
or Subject to Any Power or Right to Dispose Of or to
Charge.

General
Interest

Interest in land.	None.
Personal property.	None.
Property in money, stock, shares, bonds, annuities, etc.	None.
Rights and powers, legacies and bequests.	None.
Total,	None.

Property heretofore conveyed for benefit of
creditors.

Portion of debtor's property conveyed by
deed of assignment, or otherwise, for the benefit
of creditors; date of such deed, name and address
of party to whom conveyed; amount realized
therefrom, and disposal of same, as far as known
to debtor.

None.

Attorney's Fees.

Sum or sums paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

None.

Total, None.

Schedule B-5. Property Claimed As Exempt from the Operation of the Act of Congress Relating to Bankruptcy.

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.

None.

Property claimed to be exempt by State laws, with reference to the statute creating the exemption.

All personal property unencumbered and all equities in encumbered properties described on schedule B-2 to the extent of \$400.00. The petitioner herein is the head of a family with whom he resides and supports, and is entitled by the statute of Illinois to exempt personal property to the amount of \$400.00.

The petitioner herein claims a homestead in and to the real estate herein described to the extent of \$1,000.00 against all creditors, except the mortgages and said trustee.

\$674.00

Total, \$674.00

Schedule B-6. Books, Papers, Deeds, and Writings Relating to Debtor's Business and Estate.

Books. None.

Deeds. None.

Papers. None.

Oath to Schedule B (Duly verified).

SUMMARY OF DEBTS AND ASSETS.

(From the statements of the debtor in Schedules
A and B.)

Schedule A—	1-a	Wages	None
	1-b (1)	Taxes due United States	None
Schedule A—	1-b (2)	Taxes due States	500.00
Schedule A—	1-b (3)	Taxes due counties, districts and mu- nicipalities	None
Schedule A—	1-c (1)	Debts due any person, including the United States, having prior- ity by laws of the United States	None
Schedule A—	1-c (2)	Rent having priority	None
Schedule A—	2	Secured claims	16,364.41
Schedule A—	3	Unsecured claims	640.00
Schedule A—	4	Notes and bills which ought to be paid by other parties thereto	None
Schedule A—	5	Accommodation paper	None
Schedule A, Total			<u>\$17,504.41</u>
Schedule B—	1	Real estate	8,000.00
Schedule B—	2a	Cash on hand	None
Schedule B—	2-b	Negotiable and nonne- gotiable instruments and securities	None
Schedule B—	2-c	Stock in trade	None
Schedule B—	2-d	Household goods	107.00
Schedule B—	2-e	Books, prints, and pic- tures	None

Schedule B—	2-f	Horses, cows, and other animals	171.00
Schedule B—	2-g	Automobiles and other vehicles	27.00
Schedule B—	2-h	Farming stock and implements	None
Schedule B—	2-i	Shipping and shares in vessels	None
Schedule B—	2-j	Machinery, fixtures, and tools	94.00
Schedule B—	2-k	Patents, copyrights, and trade-marks	None
Schedule B—	2-l	Other personal property	275.00
Schedule B—	3-a	Debts due on open accounts	None
Schedule B—	3-b	Policies of insurance	None
Schedule B—	3-c	Unliquidated claims	None
Schedule B—	3-d	Deposits of money in, banks and elsewhere	None
Schedule B—	4	Property in reversion, remainder, expectancy or trust.	None
Schedule B—	5	Property claimed as exempt \$1,400.00	
Schedule B—	6	Books, deeds and papers	None
Schedule B, Total			\$8,674.00

And afterwards, to wit, on the 29th day of February, A. D. 1940, being one of the days of the regular February term of said Court, in the record of proceedings thereof,

in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

In the District Court of the United States For the Northern District of Illinois Eastern Division. In the Matter of Henry Anton Pfister, Debtor. No. 72557. Thursday, February 29th, A. D. 1940.

Present: Hon. William H. Holly, District Judge.

On motion of the Court it is

Ordered that this cause be and the same is hereby generally referred to William T. Kirby, Conciliation Commissioner.

And on, to wit, the 19th day of July, A. D. 1940, came the Debtor by his attorneys and filed in the Clerk's office of said Court his certain Petition under Section 75 (s) in words and figures following, to wit:

**FARMER/DEBTOR'S AMENDED PETITION UNDER
SECTION 75 (s).**

Filed July 19, 1940, in District Court.

To the Honorable the Judges of this Court:

The Petition of Henry Anton Pfister respectfully shows:

I. That on the 14th day of February, 1940, petitioner filed his petition for a composition or extension under Section 75 of the Bankruptcy Act, which said petition was thereafter duly approved and the proceeding referred to Honorable William T. Kirby, one of the Conciliation Commissioners of this Court.

II. That petitioner (1) has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by said composition or extension proposal.

Wherefore, petitioner hereby amends his said petition pursuant to the provisions of Section 75 (s) of the Bankruptcy Act and asks to be adjudged a bankrupt, and for such other and further relief to which he may be entitled.

Henry Anton Pfister,
Debtor.

Signed: J. E. Dazey,

R. C. Coulson,

Findlay, Illinois,

Waukegan, Illinois,

Attorneys for Debtor.

Office and Post Office Address.

(Duly verified.)

And afterwards, to wit, on the 20th day of July, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

ADJUDICATION ON AMENDED PETITION UNDER
SECTION 75 (s).

Entered July 20, 1940, in District Court.

At Chicago, in said District, upon this 20th day of July, 1940:

This matter coming on to be heard upon the amendment of the petition of Henry Anton Pfister, requesting to be adjudged a bankrupt, as provided by Section 75, sub-section (S) of the Bankruptcy Act, and that the same having been heard and considered, and it appearing to the Court that the said request should be granted;

It Is Ordered that the said Henry Anton Pfister, be, and he is hereby, adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, as provided by Section 75, sub-section (S) of the Bankruptcy Act as amended, and that further proceedings be had in accordance with such section before Walter Givler, County of Lake, Waukegan, Illinois.

Holly,

District Judge.

And on, to wit, the 17th day of September, A. D. 1940, came the Debtor by his attorneys and filed in the Clerk's office of said Court his certain Petition for Restraining Order in words and figures following, to wit:

**PETITION FOR EMERGENCY RESTRAINING
ORDER.**

Filed September 17, 1940, in District Court.

To the said Court or to any Judge thereof:

The said farmer debtor respectfully represents:

1. This matter was on or about July 23, 1940, by order of this court referred to the Honorable Walter M. Givler, conciliation commissioner for Lake County, Illinois, at Waukegan in said county and has been so pending to this moment, pursuant to the farmer debtor's amended petition under Section 75 (s) of the Bankruptcy Act.

28 *Petition for Emergency Restraining Order*

2. The appraisal of all of the property of said farmer debtor's estate approved by said conciliation commissioner is as follows:

Real estate consisting of a gross acreage of 87 1/2 acres of which approximately 5 acres is subject to drainage easement \$16,000.00

Household and garden utensils	\$ 107.00
3 Horses	90.00
4 Yearling heifers	60.00
18 Dairy cows	1170.00
1 Bull	100.00
20 Hogs	60.00
130 Poultry	50.00
1 Automobile	275.00
Farming equipment	274.00

Total of household goods, garden utensils, livestock, automobile and farming equipment	\$2186.00	2,186.00
--	-----------	----------

of which the following personal property was so set off as exempt:

Household and garden utensils	\$107.00
Equity in automobile	44.00
Farm Equipment	249.00

Total personal property exemption	\$400.00
-----------------------------------	----------

Thus leaving, after setting of said exemptions the following personal property in said estate subject to the provisions of Section 75:

3 Horses
4 Yearling heifers
18 Dairy cows

1 Bull

20 Hogs

130 Poultry.

1 Automobile (of which \$44 is exempt out of a total valuation of \$275).

Farming equipment to the value of \$25.

(\$274 total value, \$249 exempt).

Total value of personal property not exempt \$1786.00

Of said personal property the only revenue producing portion is 18 dairy cows while fresh (each cow being out of production and a dead expense for an average period of two to four months each year); 20 hogs which can produce nothing except sale value once, and 130 poultry; said dairy cows being practically the sole income producing chattels.

Said real estate is not capable of producing sufficient feed forage and bedding for said livestock and therefore in itself produces no direct revenue, or if there be any it is more than off set by the necessity of purchasing feed, forage, bedding, medicines, and veterinary services for said livestock.

3. On August 13, 1940, an order was entered by said conciliation commissioner which said order provides for a stay of proceedings against the said farmer debtor or his property for a period of three years from April 26, 1940. Said order is contrary to the provisions of Section 75. (s) (2).

4. Said order entered by said conciliation commissioner on August 13, 1940, further provides for rental payments during said three years beginning April 26, 1940, of \$2,125.00 per year payable in semi-annual installments.

of \$812.50 the first year, \$1,062.50 the second year, and \$1,312.50 the third year; the first installment to be paid on October 26, 1940, being a total of \$6,375.00 to be paid as rental for said three year period running from April 26, 1940. Said order fixing said rental period running from April 26, 1940, is contrary to the provisions of Section 75 (s) (2).

5. Said order entered by said conciliation commissioner on August 13, 1940, further provides for certain payments to be made quarterly, in addition to said rental, in installments of \$406.25 quarterly the first year (being a total of \$1,625.00 the first year); of \$531.25 the second year (being a total of \$2,125.00 the second year); and of \$656.25 the third year (being a total of \$2,625.00 the third year), or a total for the three years of \$6,375.00 in addition to total rental payments of \$6,375.00 during the same period which is a grand total of all rental and additional payments of \$12,750.00 for the three year period beginning April 26, 1940, being an average annual payment of \$4,250.00 per year for each of the said three years.

6. Said order bears the written approval of three creditors of said farmer debtor, namely, Northern Illinois Finance Company, Algonquin State Bank, and E. C. Hook, and no other approval. Said order was not presented to said farmer debtor or to his counsel and was not approved by him or by his counsel. No objection was entered by the farmer debtor to said order and no hearing on any such objection has been had. Said farmer debtor at all times during the pendency of said reference desired, and he still desires, to present evidence upon the subjects

of said order but he has not had opportunity to do so. The evidence to be so presented, if opportunity be afforded to present it, will demonstrate that said sums of rental and said sums of additional payments are not pursuant to law. Said period fixed for the retention of possession of his property by the farmer debtor is contrary to law. Said period fixed for the said stay of proceedings is contrary to law. Your petitioner, the farmer debtor herein, has filed with and there is now pending before said conciliation commissioner his petition for a rehearing on the subject of said order of August 13, 1940.

7. The docket of said conciliation commissioner in said matter contains among others the following memoranda:

"August 7, 1940. Petition of Hartman and Son for reclamation of personal property filed.

"August 7, 1940. Petition of Algonquin State Bank for reclamation of personal property filed.

"August 8, 1940. Petition of National Discount Credit Corporation for reclamation of personal property filed.

"August 10, 1940. Petition of Northern Illinois Finance Company for reclamation of personal property filed.

"August 13, 1940. * * * Hearing on reclamation petition and stipulations by debtor and each of the following claimants: Hartman and Son; Northern Illinois Finance Company; and the Algonquin State Bank, that the personal property described in the petition is perishable within the meaning of paragraph number (2) subsection (s) of Section 75 of the Bankruptcy Act; it is further stipulated that the property described in the reclamation petitions

is not at this time claimed by bankrupt as exempt property. Hearing on all further motions and petitions continued to August 30, 1940, at 10⁰⁰a. m., D. S. T."

• • • • • • •
 "August 30, 1940. Hearing on all above matters continued to September 10, 10 A. M. DST."

• • • • • • •
 "September 7, 1940. Further hearing had and petition of Algonquin State Bank, Hartman and Son, and Northern Illinois Finance Company filed praying for order authorizing sale of certain cattle contained in conditional sales contract and chattel mortgage as perishable property, prayer of petitions granted as per order (Dft)."

8. Your petitioner, the undersigned farmer debtor, further represents that no order pursuant to the memorandum above quoted from the said conciliation commissioner's docket, dated September 7, 1940, has been issued or entered by said conciliation commissioner.

9. Your petitioner further respectfully represents that although no order for the sale of his cattle or other chattels has been issued or entered by said conciliation commissioner, he has been informed and believes and therefore avers that said conciliation commissioner proposes to issue an order of sale directing the sale of said cattle or other chattels at the end of ten days from September 7, 1940, which period of ten days will expire on September 17, 1940.

10. Your petitioner further avers that neither he nor his counsel admitted or consented or stipulated in any manner as stated or inferred by said memorandum quoted

above from the said conciliation commissioner's docket under date of August 13, 1940, that any of his personal property described in the petition or elsewhere is perishable within the meaning of any portion of Section 75 of the Bankruptcy Act.

11. Upon the issuance or entry of an order by said conciliation commissioner pursuant to said memorandum above quoted from said conciliation commissioner's docket dated September 7, 1940, your petitioner desires to obtain a rehearing of said matter or to file a petition for review thereof or both as the necessity of the situation may require for the protection of his rights under Section 75.

12. Your petitioner says that it is absolutely necessary for the preservation of his rights under Section 75 of the Bankruptcy Act that the said conciliation commissioner be restrained from proceeding with the sale of any of your petitioner's property until he shall have first entered an order therefor.

Wherefore your petitioner prays the court to issue an order restraining the said conciliation commissioner, the Honorable Walter M. Givler, conciliation commissioner for Lake County, Illinois, from proceeding in any manner to sell or have sold any of the property of your petitioner until he shall have first entered and issued an order therefor.

Henry Anton Pfister

Farmer Debtor

(Duly verified positively by Henry Anton Pfister,
Farmer Debtor.)

Affidavit of J. E. Dazey

(Duly verified by Robert E. Coulson as counsel of record for said farmer debtor.)

(Duly verified by Elmer McClain as one of counsel for said farmer debtor.)

And on, to wit, the 19th day of September, A. D. 1940, came the Debtor by his attorneys and filed in the Clerk's office of said Court his certain Affidavit of J. E. Dazey in words and figures following, to wit:

AFFIDAVIT OF J. E. DAZEY.

Filed September 19, 1940, in District Court.

To: The Honorable William H. Holly, Judge.

J. E. Dazey, being first duly sworn, states that he is a resident of Findlay, Shelby County, Illinois. That he is a duly licensed attorney and has been for twenty-five years last past. That he is the attorney for Henry Anton Pfister, Bankruptcy No. 72557.

That the affiant became ill on or-to-wit the 21st day of May, A. D. 1940, with high-blood pressure, which resulted in a stroke of apoplexy on his left side and from that time since has not been able to attend to any case in court, and has only been able to do a small amount of office work and that his blood pressure during these months past has been as high as two hundred thirty-two and is one hundred ninety-two at this time.

That on the filing of the case above referred to, your affiant obtained the services of one Robert E. Coulson of Waukegan, Lake County, Illinois, who is a young attorney beginning a practice at this time and that he at no time has been authorized by me to take any steps in said case

only to file papers prepared by myself and mailed to him, and up and until the 7th inst. did not know he had made any stipulations or filed any papers of any kind or character in reference to the case at bar.

Further your affiant sayeth not.

(Seal)

J. E. Dazey.

(Duly certified.)

And on, to wit, the 19th day of September, A. D. 1940, came the Algonquin State Bank by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

**ANSWER TO PETITION FOR EMERGENCY
RESTRAINING ORDER.**

Filed September 19, 1940, in District Court.

To the Honorable Judge Holly:

Now comes the Algonquin State Bank, an Illinois banking corporation, by Henry L. Cowlin, its attorney, Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman & Son, by Elmer C. Tobin, their attorney, and the Northern Illinois Finance Company, a Delaware corporation, by Carbary & Teschke, its attorneys, and for answer to the petition for emergency restraining order, say:

1. They admit the allegations in Paragraph 1 of said complaint contained.
2. They neither admit nor deny the allegations in paragraph 2 thereof with reference to the value and list of personal property therein contained, but deny that the

eighteen dairy cattle are the only revenue-producing personal property of said debtor. They deny the last paragraph of paragraph 2 of said petition.

3. They neither admit nor deny the allegations in paragraph 3 but do deny the conclusion in the last sentence thereof.

4. They aver in answer to paragraph 4 of said petition that the amounts therein described to be paid by said debtor are substantially the same as the oral offer made by said petitioner on the 13th day of August, A. D. 1940, the date of the entry of said order, and deny that such order is contrary to the provisions of Section 75 S 2.

5. They admit the allegations in paragraph 5 of said petition, contained and aver that same is substantially the offer orally made by said debtor petitioner as aforesaid through his counsel to the conciliation commissioner.

6. As to the allegations in Paragraph 6 of said petition contained, the undersigned avers that said farmer debtor was represented at each and every hearing in said matter before said conciliation commissioner by one Robert Coulson, signatory to the affidavit to the petition filed herein, who is a duly licensed and practicing attorney in this State with offices at Waukegan, Illinois, the city at which all of the hearings herein were had; that said Coulson was present and advised of each and every order and proceedings had at each and all of the hearings before said conciliation commissioner, had ample opportunity to present plans and make objections to orders entered within the time and manner provided by

law or to appeal therefrom if he so desired; that said Coulson, as such attorney for said farmer debtor, was present on the date of the entry of the order in paragraph 6 of said petition alleged; that the first payment due under said order was on the 28th day of August, A. D. 1940; that on the 26th day of August, A. D. 1940, he sent a letter to the attorneys representing the undersigned creditors, a copy of which is hereto attached and marked Exhibit A, in and by which said letter said Robert Coulson, as such attorney, proposed to ask for an extension of time to prepare objections and motions with regard to the commissioner's findings as to rent to be paid; that said Coulson obtained a continuance of the matters before said conciliation commissioner to and until the 7th day of September, A. D. 1940, that on the 7th day of September, A. D. 1940, the date to which said hearing was, on the motion of said Coulson, continued; no such objections or motions were made by the said Coulson on behalf of said farmer debtor; that at said hearing of September 7, A. D. 1940, the said debtor farmer was present in person and was also represented at said hearing by the said Robert Coulson, his attorney, and by Attorney U. G. Ward of Shelbyville, Illinois, but no such objections or motions were filed herein either by the said debtor farmer or for him through either of his said attorneys so present at said hearing; that at said hearing of September 7, A. D. 1940, said debtor farmer was asked in the presence of said conciliation commissioner and in the presence of his attorneys, by the undersigned creditors and by the conciliation commissioner, if he had any other or further offer to make with reference to his ability

to pay rent or on the principal of said indebtedness, to which said debtor and his attorneys replied they did not; that at said hearings before said conciliation commissioner the said debtor farmer, through his counsel, Robert E. Coulson, has been repeatedly requested to attend such hearings and submit such plans as he might have with reference thereto, all of which requests were neglected or refused by said debtor farmer; that the said debtor farmer has had ample opportunity to file objections and make proposals and offers within the time and manner provided for under the law; that no petition for rehearing on the subject of the order of August 13, A. D. 1940, has been filed with said conciliation commissioner so far as the undersigned are advised.

7. That they neither admit nor deny the allegations in paragraph 7 of said petition.

8. They deny the allegations in paragraph 8 of said petition contained and aver that orders have been entered by said conciliation commissioner for the sale of said property on the 7th day of September, A. D. 1940, on the petition of the undersigned, a copy of the order on the petition of the Hartman & Sons, being hereto attached and marked "Exhibit B"; that on said date a further order was entered setting the date of said sale, a copy of which is hereto attached and marked "Exhibit C."

9. They deny each and all of the allegations in paragraph 9 of said petition contained.

10. They deny the allegations in paragraph 10 of said petition contained and on the contrary aver that on

the 13th day of September, A. D. 1940, they appeared before said conciliation commissioner with witnesses to make proof of the facts contained in their petitions for sale of the personal property therein described then on file in said cause, swore one of the witnesses to make such proof, whereupon one Robert Coulson, attorney of record for said debtor and representing him at said hearing, waived such proof and stipulated that said cattle were perishable under the provisions of Section 75 of said bankrupt act, and waived any proof in that regard on behalf of the undersigned, and that said commissioner so found, as will appear by his findings more fully set forth in his orders thereon, a copy of one of which is hereto attached and marked "Exhibit B."

11. The undersigned further deny that said petitioner is entitled to the relief prayed for under paragraph 11 of said petition for the reason that said order is entered as of September 7, A. D. 1940, and that the time for appeal or review thereof has gone by.

12. Your petitioners deny the allegations under paragraph 12 of said petition.

The undersigned therefore say that said petitioner is not entitled to the relief prayed for under said petition or any part thereof and request that same be dismissed at petitioner's cost.

The Algonquin State Bank, etc.
Hartman & Son, co-partners.
Northern Illinois Finance Co., etc.

(Duly verified by attorneys.)

Exhibits "A" and "B"

EXHIBIT "A."

August 26, 1940

Dear Sir:

In re: Henry A. Pfister

In order to save you a trip to Waukegan, if possible, I am writing now to inform you that at the hearing of this matter on Wednesday, August 28, I propose to ask the Commissioner for an extension of time within which to prepare objections and motions with regard to the Commissioner's findings as to rent to be paid on this property.

Yours very truly,

REC:LH

(Signed) Robert E. Coulson.

EXHIBIT "B."

This matter having come on to be heard this 7th day of September, 1940, upon the petitions of the Algonquin State Bank, Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman and Son, and the Northern Illinois Finance Corporation, a Delaware corporation, for the sale of certain cattle described in the petitions therein as perishable property, under the terms of Section 75S of the Bankruptcy Act, and the Court having entered orders upon their respective petition for sale of said perishable property,

It Is Hereby Ordered that William Chandler be and he is hereby appointed the officer of this Court to sell the cattle, horses and cows contained in the respective orders hereinabove referred to, and that said sale be held pursuant to said orders on the 30th day of September, A. D. 1940.

Walter M. Givler
Judge

And afterwards, to wit, on the 19th day of September, A. D. _____, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly District Judge, appears the following entry, to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Debtor. No. 72557.

**MEMORANDUM OF DISTRICT JUDGE DENYING
PETITION TO RESTRAIN SALE.**

Entered September 19, 1940, in District Court.

Thursday, September 19th, A. D. 1940.

Present: Hon. William H. Holly, District Judge.

This cause coming on to be heard on the debtor's petition to restrain a certain sale, the Court having heard the arguments of counsel and being advised in the premises.

It Is Ordered that the prayer of said petition be and the same is hereby denied.

And on, to wit, the 7th day of August, A. D. 1940, came Hartman & Son by their attorneys and filed in the Clerk's office of said Court their certain Petition to Reclaim or Sell Certain Cattle in words and figures following, to wit:

**PETITION OF HARTMAN AND SON TO RECLAIM OR
SELL CATTLE.**

Filed August 7, 1940, with Conciliation Commissioner.

To the Honorable Walter M. Givler, Referee:

Your petitioners, Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman & Sons respectfully show and allege as follows:

1. That they are a co-partnership doing business as aforesaid and with their principal place of business in the Town of Hampshire, Kan. County, Illinois.

2. That at various dates and times, from the 9th day of October, A. D. 1937, to the 28th day of October, A. D. 1939, they delivered unto the above named debtor various dairy cattle for use in his farming enterprise under certain contracts and agreements commonly known as conditional sales notes, under and by virtue of which the title to said cows so delivered the said debtor were to remain in your petitioners until the full purchase price thereof had been paid in cash, and that there now remains due and owing to your petitioners from said debtor upon the above mentioned sales note the sum of \$470.00, together with interest thereon from May 4, A. D. 1940, to this date.

3. That the above named debtor, on or about the 25th day of April, A. D. 1940, filed his petition in this Court, praying that he be afforded an opportunity to effect a composition or extension of time to pay his debts under Section 75 of the Bankrupt Act; that a first hearing was held under said petition at which a proposal to his credi-

tors was duly made in writing by the said debtor; that said proposal was not accepted and thereupon the said debtor filed his petition herein under sub-Section S of said Section 75 and requested that he be adjudicated a bankrupt herein; that thereupon, on motion of said debtor, appraisers were appointed to appraise his personal property and to set off his exemptions.

That your petitioner, in ignorance of the filing of said petition, accepted a subsequent note dated May 4, 1940, and marked the note hereto attached as renewed by said note, but the filing of said petition by said debtor automatically cancelled the effect of said note of May 4th, 1940.

4. That listed among the assets in said estate were five certain dairy cows, four of which now bear ear tag numbers 3274711, BN12098, 295720 and H189; that one other cow sold by your petitioners to the said Henry Pfister has lost her ear tag number; that such cow so losing said ear tag number is a Guernsey cow and was identified by said debtor to your petitioners as one of the cows so delivered said debtor by them; that said cows bearing ear tag numbers aforesaid and said Guernsey cow in this paragraph mentioned were cattle delivered by your petitioner to said debtor under the above mentioned conditional sales contracts and to which the title now remains in your petitioners under and by virtue of the terms of said note of October 28, 1939, copy of which is hereto attached and marked Exhibit A.

5. That the various notes and written memorandum under which said cattle were delivered have from time to time and on various dates been renewed, to and until

the 28th day of October, A. D. 1939, when said debtor executed and delivered unto your petitioners his certain conditional sales note, copy of which is hereto attached and marked Exhibit A, the original of said note being now on file in this cause with the original claim of these petitioners.

6. That since the execution and delivery of said note, copy of which is hereto attached and marked Exhibit A, and since the filing of the petition herein by the debtor, the said debtor has, contrary to the terms and provisions of this Act, sold and disposed of two of the cattle mentioned in the above mentioned note and the property and security of your petitioners, said sale being made unbeknown to your petitioners; that dairy cattle as such are subject to so many unforeseen and unpredictable maladies and can and may be so easily spoiled or ruined through careless and improper handling; as to make them perishable property within the meaning of this Act.

7. That said cattle so described in said note are not the property of said debtor; that the only interest he has therein is the right of purchase thereof by the payment of the amount specified in said notes; that by virtue thereof and by virtue of the statutes in such case made and provided, the said debtor has no right of exemption in and to said cattle above described; that if said cattle are allowed to remain in said herd and in the possession of said debtor under said Act, it will create a possible total loss to your petitioners of all security held by them on said cattle; that said cattle being allowed to remain in said dairy would, under the terms and conditions of this Act, be rendered useless for dairy purposes, unsaleable and fit

only for slaughter purposes at a considerably reduced value.

8. That your petitioner, in view of the facts aforesaid, namely: the sale of such cattle unbeknown to your petitioners and in view of the perishable character of the said property, feels himself unsafe and insecure as defined in his said notes, and has and does hereby elect to declare the balance due on his said notes and to reclaim possession of said cattle; that if said order be not entered allowing him to reclaim his said cattle, that then said cattle be sold as perishable property under the terms and conditions of this Act.

Wherefore, your petitioners pray that an order be entered herein directing said bankrupt to turn over unto your petitioners the following described cattle:

Cows bearing ear tag numbers 3274711, BN12098, 295720 and H189.

1 Guernsey cow bearing no ear tag number.

Your petitioner further prays that in case he be not allowed to reclaim his property as in the preceding paragraph prayed, that then and in that event an order be entered herein directing the sale of each and all of said dairy cattle hereinabove described as perishable property in accordance with the statute in such case made and provided, at either private or public sale at the discretion of the Court.

Respectfully submitted,

Hartman & Son,

By Harvey Hartman.

(Duly verified)

EXHIBIT A.

\$550.00

Hampshire, Illinois, October 28, 1939.

6 Months after date, for value received, I or we promise to pay Hartman & Son, or order Five Hundred Fifty 00/100 Dollars at their office in Hampshire, Illinois, or wherever holder hereof may from time to time in writing appoint, with interest at the rate of seven per cent per annum, payable semi-annually after date until paid.

This Note is Given for 7 cows - J556742 - H189 - ES 54296 295720 - 32-74711 - CW 34849 - BN 12098.

I or we agree that no extension of the time of payment of this note shall release me from the payment of the same. If this note is collected without suit by a person other than the owner, then I agree to pay the person collecting the same a reasonable fee for collecting it. It is further expressly understood and agreed, that the title to the property for which this note is given shall remain in the payee until this note or judgment rendered thereon is fully paid, and in case of default in the payment of this note or the interest thereon, or if the payee shall feel insecure or unsafe the payee is hereby given the right to take immediate possession of, and remove and sell said property at either public or private sale, with or without notice as the holder hereof may elect. Maker hereby waives all right to any notice of such sale, whether by law provided or otherwise. In case of sale, surplus from such sale shall be paid to the signers hereof.

And to secure the payment of said amount I hereby authorize any attorney of any court of record to appear for

me in any such court, in term or vacation, at any time after the signing of this note, whether the same due by its terms or not, and confess a judgment without process in favor of the holder of this note for such amount as may be unpaid thereon, together with costs and Ten Dollars and ten per cent on the amount due on said note in addition thereon for attorney fees, and also to file cognovit for said amount and to waive and release all errors which may intervene in any such proceeding and consent to immediate execution upon such judgment, and I further agree that no writ or error or appeal shall be prosecuted on the judgment entered by virtue hereof nor any bill in equity filed to interfere in any manner, with the operation of said judgment; hereby ratifying and confirming all that my said attorney may do by virtue hereof. And the endorsers, signers and guarantors severally waive presentation for payment, protest, and notice of protest and notice of payment of this note and diligence in bringing suit against any party to this note.

H. A. Pfister (Seal)

(Seal)

No. 53206 Due April 28, 1940.

Across the face of the two preceding paragraphs is written: Renewal May 4 1940. Hartman & Son A H

Endorsements on Back.

For value received, each of the undersigned hereby guarantees the payment of the within note at maturity or any time thereafter with interest at seven per cent per annum until paid and agrees to pay all costs and ex-

Petition to Turn Over Cattle

penses paid or incurred in collecting the same and hereby also agrees to hold himself primarily liable upon this note and to bind himself by all the provisions to which the original makers of this note have hereby subscribed, including the right to enter judgment in like manner as if he were himself the original maker thereof, and hereby waives demand of payment and notice of non-payment and protest.

Hartman & Son	Jan. 12 1940	40.00	510.00
Arthur Hartman	Feb. 16 1940	40.00	470.00

And on, to wit, the 7th day of August, A. D. 1940, came the Algonquin State Bank by its attorneys and filed in the Referee's Office of said Court its certain Petition in words and figures following, to wit:

PETITION OF ALGONQUIN STATE BANK TO TURN OVER CERTAIN CATTLE, ETC.

Filed August 7, 1940, with Conciliation Commissioner,
To The Honorable Walter M. Givler, Referee:

Your petitioner, the Algonquin State Bank, a Corporation, respectfully shows and alleges as follows:

1. That petitioner is a Corporation duly organized and existing under the laws of the State of Illinois and authorized to do business in the State of Illinois as a banking corporation with its principal place of business in the Village of Algonquin, McHenry County, Illinois.

2. That on the 24th day of July A. D. 1939, the Algonquin State Bank loaned Henry Anton Pfister, who signed as H. A. Pfister, the sum of Ten Hundred Seventy-

nine (\$1079.00) Dollars in cash, and that to secure said loan the said H. A. Pfister gave the said Algonquin State Bank, a chattel mortgage on personal property described as follows:

Five (5) Guernsey cows, 5 yr. old, wt 1000 lb each
 One (1) swiss cow, 4 yr old, wt 1050 lb
 One (1) Roan cow, 6 yr old, wt. 1100 lb
 One (1) Red cow, 6 yr old, wt 1200 lb
 Ten (10) Holstein cows, 3-6 yr old, wt. 1150 lb each
 Three (3) Holstein cows, 8 yrs old, wt 1100 lb each
 Two (2) Swiss heifers, 1 yr old, wt 500 lb each
 One (1) Holstein bull, 1 yr old, wt 500 lb
 One (1) Swiss bull, 18 mo. old, wt 750 lb
 Three (3) black horses, 12-14 yr old, wt 1500 lb each
 Five (5) mixed colors Brood Sows, wt 200 lb each
 Farm machinery valued at \$2,000.00

Also all crops to be grown in 1939, together with all grass, hay and feed used or to be used in maintaining the said live stock, hogs, the increase or offspring thereof and additions thereto, to follow said livestock.

3. That the said Henry Anton Pfister made monthly payments due under said chattel mortgage, commencing August 24th, 1939, and continuing through June, 1940, leaving a balance due the Algonquin State Bank of Seven Hundred Sixteen (\$716.00) Dollars which was payable on July 24th, 1940. That the Algonquin State Bank never received notice from the said Henry Anton Pfister that he had filed a Petition in Bankruptcy until June, 1940.

4. That in order to secure the aforementioned loan from the Algonquin State Bank, the said Henry Anton Pfister gave the Algonquin State Bank a personal property

statement, a copy of which is hereto attached, which sworn statement did not include a large portion of the indebtedness which the said Henry Anton Pfister owned, and that the said Henry Anton Pfister represented unto the said Algonquin State Bank, that the chattels covered by the chattel mortgage which he executed to the Algonquin State Bank were free and clear of all liens.

5. That the above named debtor on or about the 25th day of April, 1940, filed his Petition in this Court, praying that he be afforded an opportunity to effect a composition or extension of time to pay his debts under Section 75 of the Bankruptcy Act; that the first hearing was held under said Petition, at which time a proposal to his creditors was duly made in writing by the said debtor; that said proposal was not accepted and thereupon the said debtor filed his Petition herein under sub-Section S of Section 75 and requested that he be adjudicated a bankrupt herein; that thereupon, on motion of said debtor, appraisers were appointed to appraise his personal property and to set off his exemptions.

6. That listed among the assets in said estate were, 3 Black Horses, 4 Yearling Heifers, 20 Dairy Cows, 1 Bull, 5 Brood Sows, 1927 tractor, plow and disc, 1 corn planter, 1 wheat drill, 2 old harrows, 1 walking plow, 1 riding plow, 1 set of work harness, 1 Hay Rake, 1 Hay Loader, 1 Manure Spreader, About 400 Bu of ear corn 6 Tons of soy bean hay, 1 Lot of Shredded Fodder, 1 Lot of Ensilage, 100 Bu of Oats, 80 Bu Barley, 1 Lot of Rye, 1 Lot of Wheat, And that the chattel mortgage of the Algonquin State Bank covered, the following:

(Here are named the live stock listed in paragraph 2 of this petition.)

and that by virtue of the terms of said chattel mortgage, your petitioner has a first lien on the chattels described in said mortgage and is entitled to foreclose thereon, a copy of said mortgage being attached hereto and marked "Exhibit A." That the original chattel mortgage and the original note, which is secured by said chattel mortgage, are now on file in this cause, with the original claim of your petitioner.

7. That since the execution and delivery of said note and chattel mortgage, a copy of which is attached hereto and marked "Exhibit A," the said debtor has, contrary to the terms and conditions of the chattel mortgage Act of this State, sold and disposed of one (1) of the bulls covered in said chattel mortgage and has sold and disposed of at least one (1) of the cows described in said chattel mortgage, which were the property and security of your petitioner; that said sale was made unbeknown to your petitioner and without its consent, contrary to the provisions of the chattel mortgage Act of the State of Illinois.

8. That dairy cattle, as such, are subject to many unforeseen and unpredictable diseases and injuries and can and may be easily spoiled or ruined through careless and improper handling, so as to make them perishable property within the meaning of this Act and that brood sows are subject to many unforeseen and unpredictable diseases and injuries and can and may be easily spoiled or ruined through careless and improper handling, so as

Petition to Turn Over Cattle

to make them perishable property within the meaning of this Act; that horses are subject to many unforeseen and unpredictable diseases and injuries and can and may be easily spoiled or ruined through careless and improper handling, so as to make them perishable property.

9. That the 1939 crops that were covered in said chattel mortgage, the remainder of which consist of ear corn, soy bean hay, shredded fodder, ensilage, oats, barley, rye and Wheat, at the time that the inventory of the petitioner was filed in this proceeding, are all perishable property within the meaning of this Act.

10. That said cattle, horses, brood sows and corn, oats, rye, wheat, ensilage, hay and fodder were all covered by the chattel mortgage held by the Algonquin State Bank and that in the event the Algonquin State Bank feels itself insecure or in the event of default of said mortgage, the Algonquin State Bank, by virtue of the terms of said mortgage are given the right, to take immediate possession of said chattels and sell them; that the lien of the Algonquin State Bank is a superior lien and that by virtue of the terms of said chattel mortgage, the debtor waived any right of exemption in and to said chattels described in said chattel mortgage, a copy of which is attached hereto, marked "Exhibit A"; that if said cattle, horses, brood sows, oats, barley, rye, wheat, ensilage, shredded fodder, soy bean hay and ear corn are allowed to remain in the possession of the said debtor, under said Act, it will create a possible total loss to your petitioner of all security held by it on said cattle, horses and brood sows and the feed described herein will be fed up and

disposed of, in the event that said cattle, horses, brood sows and feed are allowed to remain in the possession of said Henry Anton Pfister, under the terms and conditions of this Act, and that by reason of said delay, the horses and brood sows would be rendered useless for farming purposes and the dairy cattle because of their being subject to diseases and being easily spoiled, would, if allowed to remain in the possession of the said Henry Anton Pfister, under the terms of this Act, be rendered useless for dairy purposes, unsaleable and fit only for slaughter purposes at a considerably reduced value.

11. That your petitioner, in view of the facts aforesaid, namely: the sale of some of the cattle unbeknown to your petitioner and the deception practiced on your petitioner by Henry Anton Pfister at the time he executed the sworn statement, a copy of which is attached hereto, and in view of the perishable character of the said property, feels itself insecure and unsafe as defined in its said chattel mortgage and has and does hereby elect to declare the balance due on the note secured by said chattel mortgage and to take possession of said cattle, horses, brood sows, corn, hay, barley, oats, ensilage, rye, wheat and shredded fodder; that if said order be not entered allowing it to reclaim its said property under the terms of said chattel mortgage, that the said horses, cattle, brood sows, corn, hay, barley, oats, ensilage, rye, wheat, and shredded fodder be sold as perishable property under the terms and conditions of this Act.

Wherefore, your petitioner prays that an Order be entered herein directing said bankrupt to turn over unto

Exhibit A, Chattel Mortgage

your petitioner the following described personal property covered in your petitioner's chattel mortgage:

(Here is named the live stock listed in paragraph 2 of this petition.)

Balance of crops grown in 1939, consisting of corn, hay, barley, oats, ensilage, rye, wheat, and shredded fodder.

Your petitioner further prays that in case he be not allowed to reclaim his property as in the preceding paragraph prayed that then and in that event, an Order be entered herein, directing the sale of each and all of the items of chattel property described in said chattel mortgage and hereinbefore described as perishable property, in accordance with the Statute in such case made and provided, at either private or public sale at the discretion of the Court.

Respectfully submitted,

Algonquin State Bank,
By Lawrence B. Jensen,
Cashier.

(Duly verified.)

"EXHIBIT A."

Doc. No. 465638 Filed July 26th, A. D. 1939, at 9:05 o'clock A. M.

Chattel Mortgage.

Know All Men By These Presents, that the undersigned, H. A. Pfister Prairie View, Illinois, of the County of Lake and State of Illinois (hereinafter referred to as the Mortgagor, whether one or several), in consideration

of the sum of Ten hundred seventy-nine and no/100 dollars (\$1079.00) loaned to said mortgagor by Algonquin State Bank, Algonquin, Ill. hereinafter called the mortgagee, the receipt of which is hereby acknowledged, and which is evidenced by the note of the undersigned for said sum, of even date herewith, due and payable \$33.00 Aug. 24th, 1939 and \$33.00 on the 24th day of each and every month thereafter until fully paid, with a final payment of \$716.00 due July 24th, 1940 to the order of the mortgagee at the office of the Algonquin State Bank, Algonquin, Ill. with interest from date until paid at the rate of .5 per centum per annum, for the purpose of securing the payment of said debt and the note evidencing the same, or any other note or notes given hereafter as a renewal thereof, together with all advances which may hereafter be made, or other liabilities of the mortgagor to the mortgagee, its successors or assigns, the following described livestock, the increase thereof and additions thereto, now in the possession of the undersigned at farm located 1 1/2 miles S. W. of Prairie View, Ill. Township of Vernon County of Lake, State of Illinois, to-wit:

(Here is named the live stock and other chattels listed in paragraph 2 of the petition.)

This mortgage, and each and all of its terms, shall continue until the debt secured hereby is fully paid.

To Have And To Hold all and singular the said chattels unto the Mortgagee, his legal representatives and assigns to his and their sole use forever;

Provided, Nevertheless, if the undersigned shall well and truly pay the note above mentioned or any exten-

sions or renewals thereof, then this mortgage is to be void; otherwise to remain in full force and effect. And provided, also, that it shall be lawful for the undersigned to retain possession of the mortgaged chattels until the undersigned shall made default in the terms and conditions of this mortgage as herein specified.

And it is understood and agreed by the parties hereto that if default shall be made, by the undersigned, in the payment of the above mentioned note, or of any extensions and renewals thereof, according to their tenor, or if the undersigned shall sell or dispose of, or attempt to sell or dispose of the said mortgaged chattels, or any part thereof, or interest therein, or to remove, or to attempt to remove the same from the feed lots above set forth, or shall neglect the care of said live stock, or in cases of the unreasonable depreciation of said mortgaged chattels, or if the Mortgagee shall deem himself insecure, then and in either or any of said events, at the option of the Mortgagee, without notice of said option to any one, it shall be lawful for the Mortgagee to take immediate possession of the mortgaged chattels and for that purpose to pursue the same wherever said chattels may be found and to enter any premises of the undersigned, with or without force or process of law; wherever said chattels may be found, and take possession of, remove, sell and dispose of the same at either public or private sale as Mortgagee may determine. Such sale may be either in the State and County where said mortgaged chattels are found and at such place therein as the Mortgagee may determine or he, at his option, may ship said chattels to any public stockyard selected by him, and there sell the same on the open

market to the person or persons who shall offer the highest price therefor. The Mortgagee shall give the undersigned notice in writing of the time and place of sale, three days prior thereto, by mailing a copy of said notice, postage prepaid, addressed to the last known place of address of the undersigned and by posting a copy of said notice at the place where the mortgaged chattels are located three days prior to said sale and said notices shall be all that is requisite if the mortgaged chattels are sold at private sale; if sold at public sale, then the Mortgagee, in addition, shall post written notice in three public places, in the County where the mortgaged chattels are located for a like period of time. At any sale the holder of the note secured hereby shall have the right to bid upon and purchase the mortgaged chattels without the right of redemption on the part of the undersigned.

Out of the proceeds of sale shall be paid first; the expense and cost of recovering possession of the mortgaged chattels whether by suit or otherwise, including reasonable compensation of any attorney employed by the Mortgagee in said matter, next the reasonable cost and expenses incurred by the Mortgagee in caring for, removing, transporting and selling chattels and then Mortgagee shall apply the remainder to the payment of the note hereby secured or such part thereof as may remain unpaid and the remainder of said proceeds, if any, shall be paid to the undersigned. If said proceeds shall fail to satisfy the said debt, interest, costs and charges the undersigned covenants and agrees to pay the deficiency to the Mortgagee on demand.

For the purpose of obtaining the loan secured hereby, the undersigned covenants, warrants and represents that he is the absolute owner of all the above described live stock and additional mortgaged chattels; that the description, age, marks and brands are as stated; that the said mortgaged chattels are free from any encumbrance and that the same are now in his possession at the places above described and will be removed only to the feed lots above mentioned; that either after payment of the debt hereby secured or with the written consent of the Mortgagee to sell the livestock or any part thereof herein described, he will consign said stock to and sell it only through an agency affiliated with the * * * and in default thereof, the commissions which would have accrued for said sale shall become an addition to the amount due the Mortgagee by the undersigned and shall be secured hereby.

It is further understood and agreed that this mortgage and all of the rights, privileges and powers therein vested in the mortgagee shall inure to the benefit of and may be exercised by any subsequent owner and holder of the note hereby secured and that this mortgage shall be binding upon the personal representatives, successors and assigns of the parties hereto or either of them, and that the benefit of any valuation, appraisalment, stay, exemption and redemption laws are waived by the undersigned.

In Witness Whereof, the undersigned has hereunto set his hand and seal this 24th day of July 1939.

H. A. Pfister (Seal)

Individual Acknowledgment (Duly acknowledged)

Endorsed: "This instrument to be filed but not recorded. Algonquin State Bank, Algonquin, Illinois. L. B. Jensen Cashier."

"EXHIBIT B."

PROPERTY STATEMENT.

To Algonquin State Bank, Algonquin, Ill. 7/24/39.

For the purpose of obtaining credit with you for money which I may now, or hereafter borrow of you, I, H. Pfister, of Prairie View, in the County of Lake in the State of Illinois, do hereby make the following as a Full, Complete and true statement of my present resources and liabilities.

Resources	Dollars Cts.	Liabilities	Dollars Cts.
Notes good		Mortgage on real estate, state encumbrance on each piece—when due—1941	\$8000. 00
Cash on hand or in bank			
Other personal property—described it			
Cattle No. 25 Weight Value	2200 00	Chattels	1079. 00
Horses No. 3 Value	400. 00	Mortgage on stock	
Sheep No. Value		Viz: Cattle	
Hogs, No. 5 Value	100. 00	Horses	
Hay Value	200. 00	Sheep	
Grain Value	1000. 00	Hogs	
Farming Tools	2000. 00	Money borrowed without security.	
Real estate, market value.		For borrowed money—rate of interest paid	
Give name of person holding title.		\$ Due	
Myself		\$ Due	
Annual Sales \$		\$	
Homestead, at value—state in whose name	26,000. 00	Amount owing on judgment	
Insurance on property \$15000.00		Are you surety on notes or bonds?	
		Confidential & other debts not included above.	
		References:	
Total Assets	\$31,900.00	Total Liabilities of every kind	\$9079.00
Net Assets	22,821.00		
Business		Names of Partners in full	
Located at			

Petition to Turn Over Cattle

The above statement, both printed and written, has been carefully read by me and I affirm it to be a full and correct statement of my financial condition at this date and any change that is against me, I will notify you at once.

H. A. Pfister

(Duly verified.)

And on, to wit, the 10th day of August, A. D. 1940, came the Northern Illinois Finance Company by its attorneys and filed in the Conciliation Commissioner's office of said Court its certain Petition to Turn Over Certain Cattle in words and figures following, to wit:

PETITION OF NORTHERN ILLINOIS, ETC., TO TURN OVER CERTAIN CATTLE.

Filed August 10, 1940, with Conciliation Commissioner.

Your petitioner, Northern Illinois Finance Corporation, a Delaware corporation, respectfully alleges:

1. That it is a Delaware corporation doing business in the State of Illinois with its principal office at 112 E. Locust Street, DeKalb, Illinois.

2. That on or about the 3rd day of January, 1940, the debtor, Henry Anton Pfister, under the name and style of H. A. Pfister, entered into a note in the amount of \$1,234.40, with interest thereon at the rate of 7% per annum from maturity until paid, payable to the order of K. M. Snyder in principal payments of sixteen equal monthly installments of \$77.15 each on the 5th day of each month beginning with the 5th day of February, 1940,

until the said principal with interest is paid; that said note was secured by a chattel mortgage of even date therewith upon the following described goods and chattels:

20 cows and 1 bull:	(EX19566-CH59174)
79783	79784
H-189	79782
295720	EV84048
DY38382	BW20230
70825	BO55313
70824	V48837
60442	BN12098
EO-34787	79786
74711	1 Gur. no tag
J556742	1 Bull

3. That on said 3rd day of January, 1940, the said K. M. Snyder duly endorsed said note and chattel mortgage without recourse to the Northern Illinois Finance Corporation, DeKalb, Illinois, and on the 8th day of January, 1940, the said chattel mortgage was recorded in the Recorder's Office of Lake County, Illinois as Document No. 472496; that the said debtor has made payments to the petitioner herein under and by virtue of the terms of said note and chattel mortgage and that there now remains due and owing to your petitioner herein from said debtor upon said note and chattel mortgage the sum of \$771.50, together with interest thereon at the rate of 7% per annum from and after May 5, 1941.

4. That the above named debtor, on or about the 25th day of April, 1940, filed his petition in this Court praying that he be afforded an opportunity to affect a

composition or extension of time in which to pay his debts under Section 75 of the Bankruptcy Act; that a first hearing under Sub-sections A to R of said Section 75 was held, at which time a proposal to the creditors of the debtor was duly made in writing by the said debtor; that said proposal was not accepted and thereupon the said debtor filed his petition herein under Sub-section S of said Section 75 and requested that he be adjudicated a bankrupt; that thereupon, on motion of said debtor, appraisers were appointed to appraise his personal property and to set off his exemptions.

5. That listed in the appraisal of the estate of the debtor are 11 dairy cows, ear tag numbers:

79783	H189
295720	70825
70824	EO-34787
CH59174	79784
79782	V48837
BN12098	

and 1 bull, ear tag number 79786, all of which are covered and included in the chattel mortgage hereinabove referred to given by said debtor to the petitioner herein; that by virtue of the appraisal so made it is indicated that the said debtor has disposed of the following cows, ear tag numbers:

DY38382	60442
74711	J556742
EV84048	BW20230
BO55313	

and 1 Guernsey with no tag and 1 bull, which cows and bull were likewise included in the aforesaid chattel mortgage; that at the first hearing of creditors the said debtor, Henry Anton Pfister, stated under oath that all of the cows and bull contained in the chattel mortgage aforesaid were still upon the premises of the debtor, with the exception of 1 cow which the said debtor had sold and disposed of without authority or consent of the petitioner herein.

6. That dairy cattle as such are subject to many unforeseen and unpredictable maladies and can and may be easily spoiled or ruined through careless and improper handling as to make them perishable property within the meaning of Section 75S of the Bankruptcy Act; that by the acts of the debtor the security of the petitioner herein has already been reduced, depreciated and dissipated; that the appraisal as returned to this Court indicates that if said cattle are allowed to remain in the possession of the said debtor under Sub-section S of Section 75 as aforesaid, that it will create a possible total loss to your petitioner herein of all security held by it on said cattle; that said cattle being allowed to remain in said dairy would, under the terms and conditions of this Act, be rendered entirely useless for dairy purposes, unsalable and fit only for slaughter purposes at a considerably reduced value; that if said cattle remain in the possession of the said debtor under the terms of Section 75S, the security of this petitioner will be dangerously impaired; that said debtor has no right of exemption in and to said cattle aforescribed.

Petition to Turn Over Cattle

7. That your petitioner, in view of the facts as aforesaid, and especially in view of the perishable character of said property, feels itself unsafe and insecure and fears diminution, removal or waste for want of proper care of said property as defined in the chattel mortgage aforesaid, and the petitioner does hereby elect to declare the entire balance due on its said note and desires to re-claim possession of said cattle; that if said order be not entered allowing it to re-claim its said cattle, that then said cattle be sold as perishable property and as insufficient security under the terms and conditions of Section 75S.

8. Wherefore, it is prayed:

(a) That an order be entered herein directing said bankrupt to turn over to your petitioner under the terms of the chattel mortgage hereinbefore described, the following described cattle:

79783	E-189
295720	70825
70824	EO-34787
(EX-19566-CH59174)	79784
79782	V48837
BN12098	79786
1 Bull	

(b) That the debtor be ordered to account for the present whereabouts or disposition of the following described cattle:

DY38382	60442
74711	J556742
EV84048	BW20230
BO55313	1 Gur. no tag

(c) That in case this petitioner be not allowed to re-claim its property under the terms of its chattel mortgage and as set forth in Paragraph (a) of the prayer hereunder, that then and in that event an order be entered herein directing the sale of each and all of said dairy cattle hereinabove described as perishable property in accordance with the Statute in such case made and provided at either public or private sale at the discretion of the Court.

Northern Illinois Finance Corporation,
a Delaware corporation;

By: T. E. Courtney,
Its President.

(Duly verified.)

And on, to wit, the 10th day of August, A. D. 1940, came the Debtor by his attorneys and filed in the office of the Conciliation Commissioner of said Court his certain Petition to Fix Rental in words and figures following, to wit:

PETITION OF FARMER DEBTOR TO FIX RENTAL.

Filed August 10, 1940, with Conciliation Commissioner.

Comes now Henry Anton Pfister, Bankrupt herein, hereinafter called petitioner, and respectfully represents:

1. that he has filed his debtors petition in this court some months ago.
2. that he was not successful in effecting a composition of, or extension of, time with his creditors in which to pay his debts and has filed his amended petition and

has been adjudged a bankrupt under Section 75-S, including subsection s and amendments thereto.

3. That among his assets are certain personal property consisting of livestock and farm implements. The said livestock being chiefly dairy cattle that are being used by your petitioner for the support of himself and family; and said personal property is incumbered by a conditional sales contract.

That the Northern Finance Corporation, a corporation of DeKalb, Illinois, has a lien on certain livestock owned by your petitioner. Said lien being a conditional sales contract in the sum of to-wit \$1,100.00.

That the Algonquin State Bank, a corporation of Algonquin, Illinois, has a lien on certain livestock owned by your petitioner. Said lien being a conditional sales contract in the sum of to-wit \$870.00.

That the National Discount Credit Corporation of Waukegan, Illinois, has a lien on a certain Oldsmobile Automobile secured by a conditional sales contract in the sum of to-wit \$258.00.

Your petitioner further states that he is the owner of certain real estate, which is included in his debtor's petition, now on file in this court, and that he is indebted to one Joseph N. Sikes, Trustee of Waukegan, Lake County, Illinois. A note in the sum of to-wit \$8,000.00, said note being secured by a trust deed on your petitioner's said real estate, and that it is necessary for your petitioner to retain the use and possession of said real estate under the order and direction of this court, as is provided by Section 75-S of the National Bankruptcy Act including subsection s and amendments thereto.

4. That the above mentioned livestock and farm implements are necessary for the petitioner's use in farming purposes and to carry on said farm work including his dairy business, all of which goes to make up the estate of your petitioner.

5. That it is for the best interest of your petitioner's estate for him to retain the use and possession of all of his real estate and personal property, incumbered or unencumbered, under the order and direction of this court, so that he may have an opportunity, as is by law in such case made and provided, to rehabilitate himself as a farmer and retain his home, and that all creditors of your petitioner, who now has secured or unsecured claims against your petitioner's estate may file same with this court as the law provides.

6. That at this time no fixed charges has been made by the Conciliation Commissioner for the use of said personal property and said real estate, and that it would be for the best interest of your petitioner's estate for the Conciliation Commissioner to fix an amount to be paid as rent for the use of said personal property and said real estate, and that the rent for same to be fixed by the Conciliation Commissioner should be payable either yearly or semi-yearly, or as the Court may direct. The same to be paid to said Commissioner as is provided in Section 75-S of the National Bankruptcy Act including subsections and amendments thereto, including paragraph one (1) and two (2) of said section. That any payments so made by your petitioner to the Conciliation Commissioner for the use of said property, either real or personal property,

Petition to Fix Rental

more than the cost, taxes and upkeep of said property shall be paid to the property parties at interest, either secured or unsecured creditors, and said net amount of rent so paid is to be applied as part payment on the original debt that your petitioner owes either on personal property or real estate. That your petitioner's moratorium began running on or to-wit the 26th day of April, A. D. 1940, and said first year of the moratorium will expire on or to-wit the 26th day of April, A. D. 1941. All until the further orders of this court.

Wherefore your petitioner prays that the Conciliation Commissioner of Lake County, Illinois, will fix a reasonable amount for him to pay to the said Conciliation Commissioner as rent, either yearly or semi-yearly, or as the Court may direct, for the use of his said personal property and his said real estate, and that any payments made over and above the taxes, costs and upkeep of said property shall apply upon the original debt now due and owing to his secured and unsecured creditors as their interests may appear. That the end of the first year of your petitioner's moratorium will be on or to-wit the 26th day of April, A. D. 1941. All until the further orders of this court.

Henry Anton Pfister.

(Duly verified.)

And on, to wit, the 31st day of July, A. D. 1940, came the appraisers and filed in the Conciliation Commissioner's office of said Court certain Appraisal and Oath in words and figures following, to-wit:

APPRAISEMENT.

Filed July 31, 1940, with Conciliation Commissioner.

Approved August 13, 1940, by Conciliation Commissioner.

Real Estate of said Bankrupt:

Valuation

That part of the Southeast Quarter of Section Twenty (20), Township Forty-three (43) North, Range Eleven (11), East of the Third Principal Meridian, bounded and described as follows, Beginning at a point in the South boundary line of said Section, One (1) Chain West from the Southeast corner of said Section, thence North, parallel to the East line of said Section, twenty-five (25) chains; thence West to the West line of the East half of said Southeast Quarter; thence South, along the West line of said East half, twenty-five (25) chains, to the South boundary line of said Section; thence East, along said South boundary line, to the place of beginning.

Also the following described real estate, to-wit: Beginning at the Southeast corner of the West half of the Southeast quarter of Section Twenty (20), Township Forty-three (43) North, Range Eleven (11), East of the Third Principal Meridian; thence North on said East line, Forty-three (43) chains and Twenty-four (24) links; thence West parallel with Section line Nine (9) chains and Twenty-five (25) Links; thence South, parallel with the East line of the West half of the Southeast Quarter of said Section, Forty-three (43) Chains and Twenty-four (24) Links, to the South Section Line; thence East Nine (9) chains and Twenty-five (25) Links, to the

place of beginning, all in Lake County,
Illinois.

\$16,000.00

The appraisal of the foregoing real estate includes the improvements thereon and is subject to all liens and encumbrances.

Personal Property of said Bankrupt:

5 beds and bedding	\$ 25.00
1 cook stove	5.00
1 heating stove	5.00
1 set of dishes	5.00
1 set of kitchen utensils	5.00
3 rugs	15.00
6 chairs	5.00
4 rocking chairs	5.00
1 sideboard	5.00
1 davenport	5.00
1 sewing machine	5.00
1 radio	5.00
3 dressers	15.00
1 set of garden tools	2.00
1 black horse	35.00
1 black horse	35.00
1 black horse	20.00
1 yearling heifer, ear tag #32-84788	15.00
1 yearling heifer, ear tag #32-84790	15.00
1 yearling heifer, ear tag #32-84789	15.00
1 yearling heifer, ear tag #32-84791	15.00
1 dairy cow, ear tag #295720	65.00
1 dairy cow, ear tag #CH59174	65.00
1 dairy cow, ear tag #32-84792	65.00
1 dairy cow, ear tag #EO-55313	65.00
1 dairy cow, ear tag #32-74711	65.00
1 dairy cow, ear tag #32-84793	65.00

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1 dairy cow, ear tag #32-70825	65.00
1 dairy cow, ear tag #32-79784	65.00
1 dairy cow, ear tag #32-79783	65.00
1 dairy cow, ear tag #32-79782	65.00
1 dairy cow, ear tag #DV-20330	65.00
1 dairy cow, ear tag #H 189	65.00
1 dairy cow, ear tag #32-79785	65.00
1 dairy cow, ear tag #32-70824	65.00
1 dairy cow, ear tag #EO-34787	65.00
1 dairy cow, ear tag #BN-12098	65.00
1 dairy cow, ear tag #P-48005	65.00
1 dairy cow, ear tag #V-48837	65.00
1 bull, ear tag #32-79786	100.00
5 brood sows	40.00
15 pigs	20.00
130 hens	50.00
One 1937 four-door Sedan Oldsmobile Automobile	275.00
2 farm wagons	10.00
1 1927 tractor, plow and disc	150.00
1 corn planter, with fertilizer	35.00
1 wheat drill	5.00
2 old harrows	5.00
1 walking plow	1.00
1 riding plow	5.00
1 set of work harness	5.00
1 hay rake	3.00
1 hay loader, 1927	5.00
1 manure spreader, 1930	10.00
2 corn plows, 1 mower and corn binder	50.00
1 lot of ear corn, about 400 bushels	150.00
6 tons of soy bean hay	30.00
1 lot of shredded fodder	10.00
1 lot of ensilage	10.00
100 bushels of oats	30.00

Order Fixing Rental

80 bushels of barley.....	35.00
1 lot of rye.....	5.00
1 lot of wheat.....	5.00
<hr/>	
Total Value of Personal Property.....	\$ 2,471.00
Total Value of Real Estate.....	16,000.00
<hr/>	
Total Value of Property.....	\$18,471.00

The foregoing appraisal of said personal property and the value placed thereon is subject to all liens and encumbrances which exist.

(Duly verified.)

And afterwards, to wit, on the 13th day of August, A. D. 1940, being one of the days of the regular August term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter M. Givler, Referee in Bankruptcy, appears the following entry, to wit:

**ORDER FIXING RENTAL AND ADDITIONAL
PAYMENTS.**

Entered August 13, 1940, by Conciliation Commissioner.

This cause coming on to be heard on the amended petition of said debtor filed under the provisions of section 75 of the Bankruptcy Act and on the motion of the creditors, E. C. Hook, Algonquin State Bank, and Northern Illinois Finance Company, for the fixing of a reasonable rental value for the property of said debtor; Henry

Anton Pfister, and for the payment of principal due and owing by said debtor to the secured and unsecured creditors herein as their interest may appear, as provided by the provisions of Section 75 (s) of said Act; and it appearing to the court and the court now finds that said debtor has filed an amended petition herein for relief under said section 75 (s) and said debtor has been duly adjudged a bankrupt under said section 75 (s) and that the value of the debtor's property has been fixed by an appraisal heretofore had, which appraisal has been approved, all as provided by said section 75 (s); and that heretofore the court has duly set aside for the benefit of said debtor his exemptions as provided by said Act and the court, now having considered said amended petition and said motion of said creditors and having heard evidence with reference to the usual, customary rental in the community where said property is located, based upon the rental value, net income and earning capacity of the property, and having considered evidence with reference to the protection of the rights of the creditors and the debtor's ability to pay with a view to his financial rehabilitation, and having heard arguments of counsel and having considered the suggestion of the debtor's counsel that it would be an aid to the rehabilitation of the debtor if payments required be reduced for the first year, increased in the second year, with a further increase for the third year, so that the total payments made will equal the sum determined by this Court as a fair annual amount to be paid, and now being fully advised in the premises, finds that the motion of said creditors for the fixing of said rental and for the payment of principal

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payments upon the amount due the creditors should be granted and the Court now finds that the reasonable rental for said property based upon the usual and customary rental in the community where the property is located, based upon the rental value, net income and earning capacity of the property, would be the sum of \$2,125.00 per year; that it will assist the debtor to pay the sum of \$1,625.00, divided in semi-annual payments the first year, \$2,125 divided into semi-annual payments the second year, and \$2,625.00 divided into semi-annual payments the third year, so that the total rental for the three-year period shall be paid in an amount equivalent to \$2,125.00 per year.

It Is, Therefore, Ordered that the possession of all of the real and personal property of said debtor, as set forth in the appraisal filed herein on July 31, 1940 (except that portion thereof designated and set apart as exempted property of said debtor as provided in the order this day entered approving the appraisers report and setting aside said exemptions), shall remain in the debtor under the supervision and control of the Court, subject to all existing mortgages, liens, pledges or encumbrances, and all such existing mortgages, liens, pledges or encumbrances shall remain in full force and effect and the property covered by such mortgages, liens, pledges or encumbrances shall be subject to the payment of the secured creditors as their interests shall appear.

It Is Further Ordered that such debtor shall be permitted to retain possession of such property during a

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period of 3 years from April 26, 1940, under the supervision and control of this court, provided that said debtor pay into this court rental for such property \$2,125.00 per year (which sum is hereby fixed as a reasonable rental) in semi-annual instalments as follows:

October 26, 1940	\$ 812.50
April 26, 1941	812.50
October 26, 1941	1062.50
April 26, 1942	1062.50
October 26, 1942	1312.50
April 26, 1943	1312.50

Said rental shall be used first, for the payment of taxes and upkeep of said debtor's property, and the remainder shall be distributed among the secured and unsecured creditors of the debtor and applied on their claims as may hereafter be ordered by the court; and said debtor be and he is hereby ordered to pay said rental as above set forth. Said debtor be and he is further ordered to pay quarterly in addition to the rental above mentioned on the principal due and owing by said debtor to the secured and unsecured creditors, as filed herein, as their interests may appear, the following sums:

July 26, 1940	\$406.25 (which time of payment is extended to Aug. 28, 1940)
October 26, 1940	\$406.25
January 26, 1941	406.25
April 26, 1941	406.25
July 26, 1941	531.25
October 26, 1941	531.25

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January 26, 1942	531.25
April 26, 1942	531.25
July 26, 1942	656.25
October 26, 1942	656.25
January 26, 1943	656.25
April 26, 1943	656.25

which principal payments, so required as aforesaid, the Court now finds is consistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation. The Court hereby reserves to itself the right to order sold any unexempt perishable property of the debtor, or any unexempt personal property now reasonably necessary for the farming operations of the debtor and to make such other and further orders as may be proper under section 75 of the Bankruptcy Act.

It Is Further Ordered that all judicial or official proceedings in any court or under the direction of any official against the debtor or any of his property be, and the same are hereby stayed for a period of three years from April 26, 1940, or until the further order of this court and if, however, the debtor at any time fails to comply with the provisions of said Section 75 of said Act, or with the orders of this court for the payment of rental and for the payment of principal due and owing, as above ordered, made pursuant to said section, or is unable to refinance himself within three years, this court shall order the appointment of a trustee and order the property sold or otherwise disposed of, as provided for in said Act; to the entry of which order the said debtor hereby

objects, which objections, having been heard, are now hereby overruled.

Enter this 13th day of August, A. D. 1940.

(signed) Walter M. Givler,
Referee.

ok.

Northern Ill. Finance Co.

by Geo. D. Carbarby

Their atty.

ok. Algonquin State Bank by
Henry C. Cowlin, atty.

ok. E. C. Hook by J. N. Sikes,
Atty.

And afterwards, to wit, on the 7th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter M. Givler, Referee in Bankruptcy, appears the following entry, to wit:

ORDER ON PETITION OF HARTMAN AND SON.

Entered September 7, 1940, by Conciliation Commissioner.

1. This matter coming on this 7th day of September, A. D. 1940, to be heard upon the verified petition of Hartman & Son, this day set for hearing before the undersigned as Referee, and the petitioners, Arthur Hartman and Harvey Hartman, co-partners doing business, as Hartman & Son, being present in open Court by their attorney, Elmer C. Tobin, and the debtor, Henry Anton Pfister, being present in open Court by Robert Coulson,

his attorney, and all other parties hereto being also represented, and the Court, being fully advised in the premises, Finds:

2. That it has full and complete jurisdiction of the parties to and the subject matter in said petition contained; that all parties hereto have had full and complete notice of the filing of said petition by said petitioners and of the hearing to be had thereon on this date, and the said debtor, through his attorney, having stipulated and agreed in open Court that the dairy cattle in said petition mentioned were and are perishable property within the meaning of Section 75, Sub-Section S, paragraph 2 of this Act.

3. That since the filing of said petition by said debtor herein, the said debtor has, according to his own admissions, sold two of the cows claimed by the petitioners, Hartman & Son, under their conditional sales notes filed herein; and has also sold other cattle covered by chattel mortgages held by others of the creditors herein; that said cattle in said petition of Hartman & Son described, on the date said note was given, constituted scant and meager security to said petitioners for the amount evidenced by said note; that said cows are cows of mature or more than mature age, and if allowed to remain in said dairy and with the said debtor under the terms of this Act, the security of the petitioners, Hartman & Son, would be materially reduced and might be, by virtue of the conduct of the debtor aforesaid, completely lost; that said cattle constitute perishable property as stipulated by the debtor herein, and it would be inequitable

or unwarranted not to allow a liquidation of said security as perishable property as in and by said Act provided.

4. That said cattle in said petition and conditional sales note described were not selected by or set off to the above named debtor as exempt property herein and that said debtor made no claim to said property as exempt; that the best interest of said petitioners and secured creditors herein require the sale of said property in said petition described in accordance with paragraph 2 of Sub-Section S of Section 7 of the Bankrupt Act; that William Chandler is a proper and suitable person to make such sale as an officer hereof.

It is Therefore Ordered, Adjudged and Decreed that William Chandler be and he is hereby appointed the officer of this Court to sell the following described property mentioned in the conditional sales notes and petition of said petitioners and attached thereto as Exhibit A, viz.:

Four dairy cows bearing ear tag numbers as follows:

3274711

BN12098

295720

H189

Also one Guernsey cow bearing no ear tag number but being at present in the herd of said debtor and on his farm.

that said sale be made at public auction on a date and hour to be selected by said officer, for cash and at a price equaling at least two-thirds of the appraised value

as placed thereon by the appraisers herein; that said sale be made in accordance with the terms and conditions as laid down by said Sub-Section S of Section 75, and that notice thereof be given by said officer by setting up written or printed notices thereof, giving the time, place and terms of such sale, in at least four of the most public places in Lake County, Illinois, and one at the place where such sale is to be had, at least five days prior to such sale, and that he shall also mail a similar copy of such notice to the petitioners and said debtor at least five days prior to such sale; that such officer herein appointed to conduct said sale make due report of such sale and expense thereon to the undersigned within two weeks thereafter and bring such money so realized from such sale into Court to abide further order thereon.

Entered this 7th day of September, A. D. 1940.

Walter M. Givler,

Referee.

And afterwards, to wit, on the 7th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter M. Givler, Conciliation Commissioner, appears the following entry, to wit:

**ORDER ON PETITION OF ALGONQUIN STATE
BANK.**

Entered September 7, 1940, by Conciliation Commissioner.

This matter coming to be heard upon the Petition of the Algonquin State Bank and the Court having heard

the evidence and being advised in the premises finds:

1. That the Algonquin State Bank held a chattel mortgage on certain personal property which was the property of Henry Antor Pfister, being described as follows, to-wit:

- Five Guernsey cows, 5 yr. old, wt. 1,000 lb. each
- One (1) Swiss cow, 4 yr. old, wt. 1,050 lb.
- One (1) Roan cow, 6 yr. old, wt. 1,100 lb.
- One (1) Red cow, 6 yr. old, wt. 1,200 lb.
- Ten (10) Holstein cows, 3-6 yr. old, wt. 1,150 lb. each
- Three (3) Holstein cows, 8 yrs. old, wt. 1,100 lb. each
- Two (2) Swiss heifers, 1 yr. old, wt. 500 lb. each
- One (1) Holstein bull, 1 yr. old, wt. 500 lb.
- One (1) Swiss bull, 18 mo. old, wt. 750 lb.
- Three (3) black horses, 12-14 yr. old, wt. 1,500 lb. each
- Five (5) Mixed Colors Brood Sows, wt. 200 lb. each
- Farm machinery valued at \$2,000.00
- Crops grown in 1939.

2. The Court further finds that The Algonquin State Bank has filed a claim in the amount of Seven Hundred Sixteen (\$716.00) Dollars and said claim has been allowed in the amount of Seven Hundred Sixteen (\$716.00) Dollars, and

3. The Court further finds that the personal property described in said Petition should be sold and that fifteen (15) days' notice should be given of said sale and that said sale should be properly advertised and that Wm. Chandler be appointed to act in behalf of this court in conducting said sale and that the money derived from

said sale be retained by this Court and be distributed in accordance with Order of this Court.

Walter M. Givler,
Referee.

And afterwards, to wit, on the 7th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter M. Givler, Referee in Bankruptcy, appears the following entry, to wit:

ORDER ON PETITION OF NORTHERN ILLINOIS,
ETC.

Entered September 7, 1940, by Conciliation Commissioner.

This cause coming on to be heard this 7th day of September, A. D. 1940, upon the verified petition of the Northern Illinois Finance Corporation, a Delaware corporation, this day set for hearing by the undersigned, as Referee, and the petitioner, Northern Illinois Finance Corporation, a Delaware corporation, being present in open court, by their attorneys, Geo. D. Carbary and Almore H. Teschke, and the debtor, Henry Anton Pfister, being present in open court by Robert Coulson, his attorney, and other parties hereto being also represented, and the Court being fully advised in the premises and having full and complete jurisdiction of the parties to and the subject matter in said petition contained, and all parties having had full and complete notice of the filing of the petition of the petitioner and of the hearing to be had thereon on this date, The Court Doth Find;

1. That on or about the 3rd day of January, 1940, the debtor, Henry Anton Pfister, under the name and style of H. A. Pfister, entered into a note in the amount of \$1,234.40, with interest thereon at the rate of 7% per annum from maturity until paid, payable to the order of K. M. Snyder in principal payments of sixteen equal monthly installments of \$77.15 each on the 5th day of each month beginning with the 5th day of February, 1940, until the said principal with interest is paid; that said note was secured by a chattel mortgage of even date therewith upon the following described goods and chattels:

20 cows and 1 bull:	(EX19566-CH59174)
79783	79784
H-189	79782
295720	EV84048
DY38382	BW20230
70825	BO55313
70824	V48837
60442	BN12098
EO-34787	79786
74711	1 Gur. no tag
J556742	1 Bull

2. That on said 3rd day of January, 1940, the said K. M. Snyder duly endorsed said note and chattel mortgage without recourse to the Northern Illinois Finance Corporation, De Kalb, Illinois; and on the 8th day of January, 1940, the said chattel mortgage was recorded in the Recorder's Office of Lake County, Illinois, as Document No. 472496; that the said debtor has made payments to the petitioner herein under and by virtue of the terms of said note and chattel mortgage and that there now remains due and owing to your petitioner herein from said

debtor upon said note and chattel mortgage the sum of \$771.50, together with interest thereon at the rate of 7% per annum from and after May 5, 1941.

3. That the above named debtor, on or about the 25th day of April, 1940, filed his petition in this Court praying that he be afforded an opportunity to affect a composition or extension of time in which to pay his debts under Section 75 of the Bankruptcy Act; that a first hearing under Sub-sections A to R of said Section 75 was held, at which time a proposal to the creditors of the debtor was duly made in writing by the said debtor; that said proposal was not accepted and thereupon the said debtor filed his petition herein under sub-section S of said Section 75 and requested that he be adjudicated a bankrupt; that thereupon, on motion of said debtor, appraisers were appointed to appraise his personal property and to set off his exemptions.

4. That listed in the appraisal of the estate of the debtor are 11 dairy cows, ear tag numbers:

79783	H189
295720	70825
70824	EO34787
CH59174	79784
79782	V48837
BN12098	

and 1 bull, ear tag number 79786, all of which are covered and included in the chattel mortgage hereinabove referred to given by said debtor to the petitioner herein; that by virtue of the appraisal so made it is indicated that the

said debtor has disposed of the following cows, ear tag numbers:

DY38382

60442

74711

J556742

EV84048

BW20230

BO55313

and 1 Guernsey with no tag and 1 bull, which cows and bull were likewise included in the aforesaid chattel mortgage; that at the first hearing of creditors the said debtor, Henry Anton Pfister, stated under oath that all of the cows and bull contained in the chattel mortgage aforesaid were still upon the premises of the debtor, with the exception of 1 cow which the said debtor had sold and disposed of without authority or consent of the petitioner, Northern Illinois Finance Corporation.

5. That the debtor, Henry Anton Pfister, by and through his attorney, Robert Coulson, has stipulated and agreed in open court that the dairy cattle in said petition mentioned and contained were and are perishable property within the meaning of Section 75, sub-section S, Paragraph 2 of the Bankruptcy Act; that by the acts of the debtor, the security of the petitioner, Northern Illinois Finance Corporation, has already been reduced, depreciated and dissipated; that the appraisal, as returned to this Court, indicates that if the said cattle are allowed to remain in the possession of the debtor under sub-section S of Section 75 as aforesaid, that it will create a possible total loss to the petitioner of all security held by it on said cattle; that said cattle being allowed to remain in said dairy would, under the terms and conditions

of this Act, be rendered entirely useless for dairy purposes; unsalable and fit only for slaughter purposes at a considerably reduced value, most of said cows already being cows of mature or more than mature age; that if said cattle remain in the possession of the said debtor, the security of the petitioner, Northern Illinois Finance Corporation, will be dangerously impaired.

6. That said cattle in said petition contained were not selected by or set off to the debtor, Henry Anton Pfister, as exempt property herein, and that said debtor made no claim to said property as exempt; that the best interest of the petitioner and secured creditors herein require the sale of said property in said petition described, in accordance with Paragraph 2 of sub-section S of Section 75 of the Bankruptcy Act.

7. Wherefore, It Is Ordered, Adjudged and Decreed:

(a) That the said cattle hereinabove referred to are hereby declared perishable property within the meaning of Section 75, sub-section S, Paragraph 2 of the Bankruptcy Act.

(b) That it is for the best interests of the petitioner, Northern Illinois Finance Corporation, and all parties concerned that the dairy cattle hereinabove described be sold as perishable property in accordance with the provision of Section 75, sub-section S of the Bankruptcy Act.

(c) That William Chandler be and he is hereby appointed the officer of this Court to sell the following described property mentioned in the chattel mortgage and

the petition of the Northern Illinois Finance Corporation,
to-wit:

20 cows and 1 bull:	(EX19566-CH59174)
79783	79784
H-189	79782
295720	EV84048
DY38382	BW20230
70825	BO55313
70824	V48837
60442	BN12098
EO-34787	79786
74711	1 Gur. no tag
J556742	1 Bull

That the debtor, Henry Anton Pfister, account for the present whereabouts or disposition of the following numbered cattle which are not accounted for in the appraisal returned to this Court:

DY38382	60442
74711	J556742
EV84048	BW20230
BO55313	1 Gur. no tag

and that if such cattle as aforesaid have lost their ear tag numbers and have been given new ear tag numbers contained in the debtor's appraisal, that such cattle with their new ear tag numbers be included within the purview and purpose of this order;

That said sale be made at public auction on a date and hour to be selected by said officer for cash and at a price equaling at least two-thirds of the appraised value as placed thereon by the appraisers herein; that said sale be made in accordance with the terms and conditions as

laid down by said sub-section S of Section 75, and that notice thereof be given by said officer by setting up written or printed notices thereof, giving the time, place and terms of such sale in at least four of the most public places in Lake County, Illinois, and one at the place where such sale is to be had, at least five days prior to such sale, and that he shall also mail a similar copy of said notice to the petitioner and said debtor at least five days prior to such sale; that such officer herein appointed to conduct said sale make due report of such sale and expense thereof to the undersigned within two weeks thereafter and bring such monies so realized from such sale into court to abide the further orders of this Court.

(d) It is further ordered, adjudged and decreed that the said debtor may, at the time and in the manner provided for in said Act, redeem said cattle from such sale.

Entered this 7th day of September, A. D. 1940.

Walter M. Givler,
Referee.

And on, to wit, the 20th day of September, A. D. 1940, came the Debtor by his attorneys and filed in the Conciliation Commissioner's office of said Court his certain Petition for Rehearing of Orders of September, A. D. 1940, in words and figures following, to wit:

**PETITION OF FARMER DEBTOR FOR REHEARING OF
ORDERS OF SEPTEMBER 7, 1940.**

Filed September 20, 1940, with Conciliation Commissioner.

To the Honorable Walter M. Givler, Conciliation Commissioner in the above entitled matter.

Said farmer debtor respectfully shows:

1. This matter has been pending by reference from the Honorable William H. Holly, Judge of the United

States District Court for the Northern District of Illinois, Eastern Division, pursuant to the said farmer debtor's amended petition under said Section 75 (s) since July 23, 1940.

2. Said farmer debtor was from the filing of his petition herein on February 28, 1940, represented by J. E. Dazey, attorney at law, of Findlay, Illinois, who obtained the services of Robert E. Coulson of Waukegan, Lake County, Illinois, a young attorney beginning to practice at this time, and who was not at any time authorized to do anything in said cause except as authorized by said Attorney Dazey, that is, to file papers prepared by said Attorney Dazey and mailed to him, and up to September 7, 1940, said Attorney Dazey did not know of any stipulations or agreements in reference to this Cause. Said J. E. Dazey, the said farmer debtor's counsel, became seriously ill on May 21, 1940, with high blood pressure which resulted in a stroke of apoplexy, since which time he has been unable to attend to any case in court and has been able to do only a little office work, and his blood pressure since said stroke has been as high as two hundred thirty-two and on September 18, 1940, was still one hundred ninety-two.

Said farmer debtor attaches hereto the affidavit of said Attorney J. E. Dazey which he makes a part of this petition for rehearing.

When said Attorney Dazey learned on or about September 7th, 1940, that the certain order of August 13, 1940, providing for the fixing of rental, ordering extra payments, staying proceedings and so forth (which is the

subject, of a Petition for Rehearing filed herein on September 16, 1940, and now pending before said Conciliation Commissioner), he as soon as he could do so retained the only counsel he could obtain who has had extensive practice in farmer debtor proceedings, namely, Elmer McClain, Attorney-At-Law, Lima, Ohio, to investigate the docket and file in said Cause in the United States District Court and in the office of said Conciliation Commissioner and to do whatever should be necessary to conserve and protect the rights of said farmer debtor.

3. That thereafter on September 12, 1940, Elmer McClain, counsel for said farmer debtor, came to the office of said Conciliation Commissioner and asked said Conciliation Commissioner for the Conciliation Commissioner's docket and for the Conciliation Commissioner's file pertaining to said cause and copied every docket entry pertaining to said cause and examined and made notes of or copied every paper in said file, taking each paper separately from said file, and carefully read it and there was on said docket no memorandum relating to the reclamation or sale of the property of said farmer debtor except as stated in the following paragraph number 6 of this petition for rehearing and there was in said file no entry of September 7, 1940, ordering the sale of debtor's chattels, namely, certain cows.

4. On September 19, 1940, said farmer debtor learned what he had not known theretofore, namely, that three certain orders had been entered by said Conciliation Commissioner ordering the sale of certain chattel property which is a part of the assets of his estate being administered herein.

5. The appraisal of all of the property of said farmer debtor's estate as approved by said Conciliation Commissioner is as follows:

Real estate consisting of a gross acreage of 37 1/2 acres of which approximately 5 acres is subject to drainage easement \$16,000.00

Household and garden utensils \$ 107.00

3 Horses 90.00

4 Yearling heifers 60.00

18 Dairy Cows 1170.00

1 Bull 100.00

20 Hogs 60.00

130 Poultry 50.00

1 Automobile 275.00

Farming equipment 274.00

Total of household goods, garden utensils, livestock, automobile and farming equipment \$2186.00 2,186.00

of which the following personal property was so set off as exempt:

Household and garden utensils \$107.00

Equity in automobile 44.00

Farm equipment 249.00

Total personal property exemption \$400.00

Thus leaving, after setting of said exemptions, the following personal property in said estate subject to the provisions of Section 75:

3 Horses

4 Yearling heifers

18 Dairy cows

1 Bull

20 Hogs

130 Poultry

1 Automobile (of which \$44 is exempt out of a total valuation of \$275).

Farming equipment to the value of \$25. (\$274 total value, \$249 exempt.)

Total value of personal property not exempt

\$1,786.00

Of said personal property the only revenue producing portion is 18 dairy cows while fresh (each cow being out of production and a dead expense for an average period of two to four months each year); 20 hogs which can produce nothing except sale value once, and 130 poultry; said dairy cows being practically the sole income producing chattels.

Said real estate is not capable of producing sufficient feed forage and bedding for said livestock and therefore in itself produces no direct revenue, or if there be any, it is more than offset by the necessity of purchasing feed, forage, bedding, medicines, and veterinary services for said livestock.

6. The docket of said Conciliation Commissioner in said matter contains among others the following memoranda:

"August 7, 1940. Petition of Hartman and Son for reclamation of personal property filed.

"August 7, 1940. Petition of Algonquin State Bank for reclamation of personal property filed.

"August 8, 1940. Petition of National Discount Credit Corporation for reclamation of personal property filed.

"August 10, 1940. Petition of Northern Illinois Finance Company for reclamation of personal property filed.

"August 13, 1940. * * * hearing on reclamation petition and stipulations by debtor and each of the following claimants: Hartman and Son; Northern Illinois Finance Company; and the Algonquin State Bank, that the personal property described in the petition is perishable within the meaning of paragraph number (2) subsection (a) of Section 75 of the Bankruptcy Act; it is further stipulated that the property described in the reclamation petitions is not at this time claimed by bankrupt as exempt property. Hearing on all further motions and petitions continued to August 30, 1940, at 10 a. m. DST."

"August 30, 1940. Hearing on all above matters continued to September 7, 10 A. M. DST."

"September 7, 1940. Further hearing had and petition of Algonquin State Bank, Hartman and Son, and Northern Illinois Finance Company filed praying for order authorizing sale of certain cattle contained in conditional sales contract and chattel mortgage as perishable property, prayer of petitions granted as per order (Dft)."

7. Your petitioner further avers that neither he nor his counsel admitted or consented or stipulated in any manner as stated or inferred by said memorandum quoted above from the said Conciliation Commissioner's docket under date of August 13, 1940, that any of his personal

property described in the petition or elsewhere is perishable within the meaning of any portion of Section 75 of the Bankruptcy Act.

8. Your petitioner respectfully says that he has at all times desired and still desires to present evidence concerning the subject of said orders of September 7, 1940, and to have the law relating thereto presented to the Conciliation Commissioner so that he may have due process of law; and that to this day he has not had an opportunity to have either such evidence or the law relating thereto presented.

9. Your petitioner attaches to this petition for rehearing the affidavit of said Robert E. Coulson which he makes a part hereof.

Wherefore said farmer debtor respectfully prays that Your Honor as such Conciliation Commissioner rehear the said matter in so far as it relates to the said orders of September 7, 1940, and that he be given an opportunity to present his evidence relating thereto.

(The affidavit of Attorney J. E. Dazey referred to in paragraph numbered 2 of the foregoing Petition for Rehearing appears at R. 34 at the end of the Petition for Emergency Restraining Order which begins at R. 27).

AFFIDAVIT OF ROBERT E. COULSON.

Robert E. Coulson, being duly sworn, says that he is an attorney at law admitted to practice in the Courts of the State of Illinois; that he was requested by Attorney J. E. Dazey of Findlay, Illinois, to act for said Attorney Dazey in the Matter of Henry Anton Pfister as a farmer

debtor in proceedings under Section 75 of the Bankruptcy Act, being Case Number 72557 pending before the Honorable Walter M. Givler, Conciliation Commissioner, by filing papers prepared by said Attorney Dazey; he further says that he at no time intended to represent said farmer debtor in any manner involving the substantive law and that in particular he did not stipulate or agree that any cows in the estate of said farmer debtor were perishable; that when present in the office of said Conciliation Commissioner with attorneys for certain creditors he was asked whether he would admit that the cows in said estate were perishable and he answered that if they meant to ask him whether the cows would die he would answer yes.

Robert E. Coulson.

(Duly verified.)

And on, to wit, the 23rd day of September, A. D. 1940, came the Debtor by his attorneys and filed in the Conciliation Commissioner's office of said Court his certain Amendment to Petition for Rehearing in words and figures following, to wit:

**AMENDMENT TO FOREGOING PETITION BY FARMER
DEBTOR FOR REHEARING OF ORDERS OF
SEPTEMBER 7, 1940.**

Henry Anton Pfister hereby amends his Petition for Rehearing of the orders of September 7, 1940, by adding thereto the following:

10. Referring to paragraph numbered 4 in said Petition for Rehearing filed September 20, 1940, your petitioner says that he did not see said orders of September

7, 1940, until one of them was shown by Your Honor as said conciliation commissioner to the Honorable Judge Holly, Judge of the District Court, in the Court Room of the United States District Court in Chicago on September 19, 1940, and he did not see a copy of said order until September 19, 1940, nor know its contents.

11. Your petitioner says that he did not, as stated in the order of September 7, 1940, since the filing of his petition under Section 75 (a) to (r) in the District Court on February 28, 1940, sell two of the cows claimed by Hartman and Son under their conditional sales contract. He says that one of said cows became infected with Mastitis, a dangerous and infectious disease of dairy cows, and that her usefulness as a dairy cow became thereby so impaired that to save as much of her value as possible, he sold her for beef, according to the best practice of dairying. He holds the proceeds therefrom of \$57.81 subject to the order of this court.

12. The appraisalment herein is by statute still subject to objections, exceptions and appeals, and said farmer debtor has not, as stated in said orders of September 7, 1940, waived, and does not waive, his right to claim any or all of said cows as exempt and will not finally claim his exemptions until said appraisalment has become final.

13. Said farmer debtor says that said cows are not, as stated in said orders of September 7, 1940, of such mature, or more than mature age, as to be or to become by reason of such maturity, perishable property.

Henry Anton Pfister

(Duly verified)

And on, to wit, the 26th day of September, A. D. 1940, came the Algonquin State Bank by its attorneys and filed in the Conciliation Commissioner's office of said Court its certain Answer to Petition for Rehearing in words and figures following, to wit:

**ANSWER OF ALGONQUIN STATE BANK, HARTMAN
AND SON, AND NORTHERN ILLINOIS, ETC.,
TO PETITION FOR REHEARING OF ORDERS
OF SEPTEMBER 7, 1940.**

Filed September 26, 1940, with Conciliation Commissioner.

To the Honorable Walter M. Givler, Conciliation Commissioner in the above entitled matter:

Algonquin State Bank, an Illinois banking corporation, by Henry L. Cowlin, its attorney, Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman & Son, by Elmer C. Tobin, their attorney, and the Northern Illinois Finance Corporation, a Delaware corporation, by Carbary & Teschke, its attorneys, for answer to the petition for rehearing heretofore filed in the above entitled cause, say:

1. The undersigned admit the allegations in paragraph 1 of the petition for rehearing contained.

2. They neither admit nor deny that J. E. Dazey represented said farmer debtor on the filing of the petition herein and are inadvised as to who obtained the services of Robert E. Coulson; that at the first hearing had before such conciliation commissioner, the said Robert E. Coulson appeared on behalf of and with said debtor farmer and was, to all purposes and intents, so far as these

creditors could ascertain, duly authorized and empowered to act as the attorney for said farmer debtor and continues to so act as such attorney; that said Robert E. Coulson, in a certain proceedings for an emergency restraining order, signed his certain affidavit therein, in and by which said affidavit, the said Robert E. Coulson asserted under oath that he was on said date counsel of record for the said Henry Anton Pfister, farmer debtor; that whatever arrangement existed between the said Coulson and the said Dazey, referred to in said petition for rehearing, is entirely unknown to these creditors, and they aver and so state the fact to be that any private understanding between the said Dazey and the said Coulson was and is immaterial to the issues advanced by said petition; they deny that said Coulson was a young lawyer just beginning practice. On the contrary, aver that said Coulson, as they are advised and believe, was born in the year 1912; was admitted to practice in the State of Illinois in 1936; that he is a graduate of Dartmouth University and Chicago University with L. L. B. and J. D. degrees; that he is now and has been for four^o (4) years last past engaged in the general practice of his profession in the city of Waukegan, Illinois; that they are inadvised as to the condition of health of the said J. E. Dazey from the 21st day of May, A. D. 1940, to this date, and call for strict proof thereof; that such condition of said counsel is unfortunate but is immaterial to the issues hereof, and aver that there was ample time between the date of said alleged illness (May 21, 1940) and the date of the entry of the order in question (September 7, 1940) for the farmer

debtor to have employed other counsel to represent him or said Dazey to employ other counsel to represent said debtor on said hearings; that the matter of selection of attorneys is a privilege of the farmer debtor; that the undersigned have no voice or authority therein and should not on this hearing be charged with the inability or inactivity of counsel for said farmer debtor; that during all of the proceedings before said conciliation commissioner, the said Coulson was present, was advised of each and every step as matters progressed, and appeared cognizant of the import and intent of every petition and the effect of every order entered thereon; that he was granted every extension and courtesy in the conduct of said matters before said conciliation commissioner; that said conciliation commissioner on numerous occasions requested the presence of said farmer debtor and the said Dazey at the various hearings had before him on the various orders and petitions entered and filed in said cause, each and all of which requests were refused by said farmer debtor farmer and the said Dazey, as his attorney.

3. That leave to file said petitions for reclamation and sale of said property was granted by said conciliation commissioner on the 27th day of July, A. D. 1940; that such petitions were to be filed by the undersigned on or before the 10th day of August, A. D. 1940, and were set for hearing on the 13th day of August, A. D. 1940; that said Coulson was present at the time leave was granted to file said petitions and on the date set for hearing on said petitions; that the said J. E. Dazey never appeared at any hearing before said conciliation commissioner for

and on behalf of said farmer debtor, though his presence was requested by the conciliation commissioner; and his said presence was particularly requested at the hearing of August 30th, A. D. 1940, at which time, by order of the conciliation commissioner at the request of said Coulson, said hearing was continued to the 7th day of September, A. D. 1940, on which said date the said Dazey did not appear for said farmer debtor; but in lieu and in place thereof, one U. G. Ward, attorney, from Shelbyville, Illinois, as the undersigned are advised, was present and acting for and on behalf of said Dazey and said farmer debtor; that each and every opportunity was afforded the said farmer debtor or the said Dazey to present the interests of said farmer debtor before said conciliation commissioner; that sufficient time elapsed subsequent to the 7th of September, A. D. 1940, when the order complained of was entered, to appeal therefrom as by rule of Court and statute provided, but no such appeal was ever taken; that they are inadvised as to the qualifications and the extent of the practice of the present attorney, one Elmer McClain of Lima, Ohio, and are inadvised as to his qualifications to represent said farmer debtor and call for strict proof thereof.

4. The undersigned deny the allegations as to the alleged search in paragraph 3 of said petition contained, and are inadvised as to the ability of the said McClain to locate the order in question, but aver that said order was signed, filed, entered and placed of record by said conciliation commissioner on the 7th day of September, A. D. 1940, in the presence of said farmer debtor, Robert

E. Coulson and U. G. Ward, the two attorneys representing said Pfister at said hearing; that said order was discussed prior to the entry thereof in the presence of said farmer debtor and his said attorneys, Robert E. Coulson and U. G. Ward. The name of the auctioneer to conduct said sale was discussed in his presence and was inserted therein after discussion with said farmer debtor by the said conciliation commissioner.

5. Defendants deny the allegations in paragraph 4 of said petition contained and aver that said farmer debtor is the former president of the Pure Milk Association and was present on the date and at the entry of the order of September 7, A. D. 1940, heard the discussion thereon, was advised as to the contents thereof, and with such experience and knowledge reflected by such official capacity in such Association, should have known the effect thereof.

6. They are not fully advised as to the appraisal figures in paragraph 5 of said petition contained but aver that the conciliation commissioner's records reflect the true condition of said appraisal and selections; they deny that the 18 dairy cattle are the only revenue-producing portion of said personal property; they deny that said real estate produces insufficient feed, forage and bedding as in said paragraph 5 of said petition contained.

7. They neither admit nor deny the allegations set forth in paragraph 6 of said petition for rehearing contained, but call for strict proof thereof.

8. The undersigned deny each and every allegation

in paragraph 7 of said petition contained, and aver that the docket entry of the conciliation commissioner on the 13th day of August, A. D. 1940, indicates and shows that a stipulation was on said date entered into concerning the perishability of the property described in said petitions, by and between the creditors therein named and the said farmer debtor by and through his attorney; that such stipulation so shown by said conciliation commissioner's docket and the petition for rehearing filed herein, was made to said conciliation commissioner and spread upon his docket in the presence of said farmer debtor's attorney and the attorneys for the undersigned creditors in open Court.

9. They deny the allegations in paragraph 8 of said petition contained. On the contrary, aver that said petitions for reclaimer and sale of said personal property as perishable were set for hearing before said commissioner on a day certain, to-wit: August 13, 1940; that said farmer debtor, through his said attorneys, had knowledge thereof and full and ample opportunity, if they so desired, to present such evidence as he might have had on the hearing of said petitions; that at said hearing on said petitions, the undersigned appeared with their witnesses to make proof of the matters and things in said petitions contained, had their witness sworn and were ready to start with the proof of the matters and things in said petitions alleged, when counsel for said farmer debtor, without solicitation from any of the undersigned or the conciliation commissioner or any other party in interest, offered and did stipulate and agree that the property in said petitions de-

scribed were perishable within the meaning of Section 75 of the Bankruptcy Act and were not selected by said farmer debtor as exempt.

10. The undersigned deny the allegations in paragraph 9 of said petition contained and call for strict proof of the matters therein alleged, and herewith attach and make part of this petition the affidavits of Henry L. Cowlin, Elmer C. Tobin and Almore H. Teschke, attorneys for the Algonquin State Bank, Hartman & Son and the Northern Illinois Finance Corporation, with reference to the matters and things covered by the alleged affidavit of the said Robert E. Coulson.

11. As to paragraph 10 set up in the amendment to petition for rehearing aforesaid, the undersigned say:

They neither admit nor deny that said petitioner did not see said order of September 7th until same was presented before Judge Holly in the District Court on the 19th of September, A. D. 1940, but aver that the only reason that said farmer debtor did not see said order, if such be the case, was for the reason that he did not exercise his privilege, if he so desired, to inspect said order prior to and at the time same was entered by the conciliation commissioner; that said order was discussed at length in his presence before said conciliation commissioner, both with him and with his attorneys prior to and at the time of the signing and entry thereof.

12. Your petitioners move that the contents of paragraph 11 as set forth in said amendment to petition for rehearing be stricken as an attempt to impeach the testimony given by said farmer debtor before Your Honor,

the conciliation commissioner in this cause, for the reason that said farmer debtor did, on his examination held before Your Honor, the conciliation commissioner herein, state that he had sold two of the cows delivered him by Hartman and Sons under the conditional sales notes attached to and made part of their claims filed herein, and also described in the conditional sales notes attached to and made part of the petition for reclaimer and sale herein; they neither admit nor deny that said farmer debtor has said sum of \$57.81 as therein suggested and aver that said farmer debtor has further sums also subject to order of this Court which he has not accounted for herein.

13. They deny the allegations in paragraph 12 of the amendment to the petition for rehearing contained and state as a matter of law that the said farmer debtor has no exemptions in said cattle, having waived such exemptions at the time of the signing of the chattel mortgage to the Northern Illinois Finance Corporation and the Algonquin State Bank, and never having had title to said cows obtained from Hartman & Son under the conditional sales notes now on file herein.

14. They deny the allegations in paragraph 13 of said amendment to the petition for rehearing contained and call for strict proof thereof.

And now the undersigned, having fully answered said petition for rehearing and amendment thereto, say:

That said debtor farmer was represented of record in this case by two attorneys and two attorneys only, namely: J. E. Dazey of Findlay, Illinois, and Robert

E. Coulson, of Waukegan, Illinois; that the said J. E. Dazey is not a member of this Bar residing in this District, and that the said Robert E. Coulson was the only attorney of record for said farmer debtor residing in this district; that notices of all proceedings had in the matter of the petition of said farmer debtor were given the said Robert E. Coulson, who is the only attorney of record and member of the Bar of this Court and residing in this district; that under rule 1, sub-section (e) of the rules of the United States District Court for the Northern District of Illinois, Eastern Division, it is provided:

"In all cases filed in or removed to this Court, all parties not appearing pro se must be represented of record by a member of the bar of this court residing in this district. Service of notice upon such attorney shall constitute service upon all other counsel appearing of record for such party."

that notice having been thus given said farmer debtor as by rules of Court provided, no further notice was necessary, and that under the rules of said Court, service of notice upon the said Robert E. Coulson or notice to the said Robert E. Coulson constituted service upon the said J. E. Dazey.

The undersigned deny that said farmer debtor is entitled to the relief or any part thereof in said petition for rehearing contained, and ask that same be dismissed forthwith, at debtor's costs.

Algonquin State Bank,

an Illinois banking corporation,

Hartman And Son

Northern Illinois Finance Corporation,

a Delaware corporation.

(Duly Verified.)

**AFFIDAVIT OF HENRY L. COWLIN, ELMER C. TOBIN
AND ALMORE H. TESCHKE.**

Henry L. Cowlin, being first duly sworn upon his oath, deposes and says that he is an attorney of record in the above entitled cause for the Algonquin State Bank; and Elmer C. Tobin, also being first duly sworn upon his oath, deposes and says that he is attorney of record in the above matter for Hartman & Son; and Almore H. Teschke, being first duly sworn upon his oath, deposes and says that he is one of the attorneys of record for the Northern Illinois Finance Company, and each of said affiants, each for themselves depose and say that they were each present before Walter M. Givler, the conciliation commissioner to whom the above entitled cause has been referred, on the 13th day of August, A. D. 1940, when the stipulation reflected in his docket as of that date was made.

These affiants further state that such stipulation was made by said farmer debtor through his said attorney of his own free will and volition; that no request was made upon said farmer debtor or his said attorney to enter into any stipulation whatsoever with reference to the facts contained in the petitions for reclamation and sale of the personal property therein described; that each of these affiant appeared before said commissioner on said date with their witnesses prepared to make proof of the facts contained in their several petitions; that several of the witnesses were sworn to testify and were about to be interrogated by the affiant, Elmer C. Tobin, on behalf of Hartman & Son, and that Harvey Hartman, one of the copartners was on the stand for interrogation purposes; and that before the said Tobin could proceed

with the interrogation, the said farmer debtor, through his said attorney, present at said hearing, voluntarily offered to make the stipulation reflected in said conciliation commissioner's docket; that thereupon said witness was withdrawn from the stand by the said Tobin, and he and the attorney for said farmer debtor dictated the stipulation into the record of the said conciliation commissioner in open Court in the presence of said conciliation commissioner and each of the affiants herein.

These affiants further state that said stipulation was joined in by the affiant, Almore H. Teschke, on behalf of the Northern Illinois Finance Corporation, and Henry L. Cowlin, on behalf of the Algonquin State Bank.

And further affiants saith not.

Henry L. Cowlin,
Elmer C. Tobin,
Elmore H. Teschke.

(Duly Verified.)

And on, to wit, the 26th day of September, A. D. 1940, came the debtor by his attorneys and filed in the Clerk's office of said Court his certain Reply to Answer to Petition for Rehearing in words and figures following, to wit:

REPLY OF FARMER DEBTOR TO ANSWER TO PETITION FOR REHEARING OF ORDERS OF
SEPTEMBER 7, 1940.

Filed As of September 26, 1940, with Conciliation Commissioner.

By stipulation of the answering secured creditors and by order of the conciliation commissioner made and

issued at the hearing on September 26, 1940, the said farmer debtor herewith presents for filing the Affidavit of U. G. Ward in reply to the Answer of Algonquin State Bank, Hartman and Son, and Northern Illinois Finance Corporation. Said reply is to be filed as of September 26, 1940.

AFFIDAVIT OF U. G. WARD.

U. G. Ward being first duly sworn upon his oath, deposes and says that he was present on September 7th, 1940, in a hearing before the Conciliation Commissioner in the above entitled matter in the city of Waukegan, Lake County, Illinois.

That the affiant is a regularly practising attorney at Shelbyville, Shelby County, Illinois where he has been engaged in the practice of law for more than twenty-five years last past. That, no order was presented to this affiant upon said hearing or at the close thereof, but that it was stated, as this affiant verily believes, that a general order should be prepared by someone or all of the attorneys representing the petitioner, and that a copy thereof, at the request of this affiant, was to be furnished to Robert E. Coulson, one of the attorneys for the debtor who was present at said hearing, but that this affiant has never seen any such order and was not advised whether one is in fact filed, or a copy thereof furnished to the said Robert E. Coulson.

Further your affiant sayeth not.

U. G. Ward,

(Duly Verified.)

Henry Anton Phister,
Farmer Debtor.

And on, to wit, the 30th day of September, A. D. 1940, came the Referee and filed in the office of said Court his certain Opinion and Decision in words and figures following, to wit:

REFEREE'S OPINION AND DECISION ON PETITION
FOR REHEARING OF ORDERS OF
SEPTEMBER 7, 1940.

Entered September 30, 1940, by Conciliation Commissioner.

Statement of Facts.

The debtor filed his petition and schedules on March 1, 1940, for a composition or extension under Section 75 of the National Bankruptcy Act including Sub-section 6. Debtor failed to obtain the acceptance of a majority in number and amount of all creditors whose claims were affected by said composition, and on May 1, 1940, filed an amended petition to comply with Section 75-S of the Act.

Debtor's counsel were J. E. Dazey of Findlay, Illinois, and Attorney Robert E. Coulson of Waukegan. The latter attended all of the hearings had in the matter before the Commissioner; Mr. Dazey never appeared at any time or at any hearing.

At the first meeting of creditors (June 29, 1940) debtor was present in person, sworn and examined, he was represented by Mr. Coulson. He submitted his proposal in writing which was rejected by a majority in number and amount of all creditors whose claims were affected. His testimony at the hearing disclosed that he was selling black dirt from his farm and was ordered

to refrain from so doing in the future. It was further ordered also that the proceeds from his sale of milk, eggs and poultry be impounded and held by him subject to the order of the Commissioner. No moneys were ever turned in to the Commissioner by debtor at any time.

Because of the nature of the proposal submitted, debtor was unable to obtain the acceptance of a majority in number and amount of all creditors whose claims were affected by said composition. He therefore amended his said petition pursuant to the provisions of Section 75-S of the Act.

Appraisers were appointed to appraise the real and personal property of debtor, in accordance with the terms of the Act, and on July 31, 1940, said appraisers filed their report setting forth a list of all of the real and personal property and their valuation of each item.

On August 2, 1940, the Commissioner filed a report of debtor's exempted property to be set apart and retained by him.

On August 10, 1940, Debtor petitioned the Court to fix the amount of rent to be paid for the use of the encumbered real and personal property. This was done.

At the hearing on August 13, 1940, it was stipulated and agreed that the security of the Algonquin State Bank, Hartman and Son and the Northern Illinois Finance Company, all of whom held conditional sales contracts or chattel mortgages, was to be considered as perishable property under the terms of Section 75-S of the Act, and on September 7, 1940, in compliance with the petition filed, the Commissioner entered an order authorizing the sale of same by William Chandler, auctioneer.

At the hearing of September 7, 1940, the following persons were present:

Robert E. Coulson, Waukegan, Illinois, representing debtor.

U. G. Ward, Shelbyville, Illinois, representing debtor.

Elmer C. Tobin, Elgin, Illinois, representing Hartman & Son.

Carbary & Teschke, Elgin, Illinois representing Northern Illinois Finance Corporation.

Henry L. Cowlin, Crystal Lake, Illinois, representing the Algonquin State Bank.

Joseph N. Sikes and John Mooradian, Waukegan, Illinois, representing E. C. Hook and Emil Geest.

Prior to that date, the Algonquin State Bank, Northern Illinois Finance Corporation and Hartman & Son (hereinafter called the Three Creditors), offered witnesses to prove that cattle of the ages covered by their conditional sales contracts and chattel mortgages were perishable within the meaning of the Act. After the witnesses were sworn but before any evidence was given by them, debtor's counsel stated that such testimony was not necessary, that he would stipulate that the security of said Three Creditors was perishable within the meaning of the Act. This oral stipulation was entered on the Commissioner's docket under date of August 13, 1940.

On September 20, 1940, through an entirely different counsel, one Elmer McClain of Lima, Ohio, the debtor filed a petition for a rehearing of the order of September 7, 1940, which order authorized the sale of the debtor's cattle as perishable property.

Discussion.

The petition for rehearing of the order of September 7, 1940, in substance, primarily raises one major issue, namely, that the debtor has not been properly represented in this matter by his counsel, and has not had his day in court.

The record, however, shows the following:

1. The first meeting of creditors was held on June 28, 1940. Debtor's counsel, Robert E. Coulson, was present at that time. Coulson, at this hearing, submitted in writing debtor's proposal which was rejected by the creditors in the presence of Debtor, and the latter was ordered to submit a counter-proposal.

2. At the second meeting of creditors, July 9, 1940, Coulson was again present, the debtor was not. Coulson stated that the debtor had no further proposal to submit to the creditors. A motion by one of the creditors to dismiss the petition as to Sections A to R was heard and allowed, and debtor was given 15 days to file an amended petition as provided by Section S of the Act.

3. On July 23, 1940, the debtor's amended petition, under Section 75-S was filed by Robert E. Coulson, debtor's attorney.

4. On July 25, 1940, Coulson moved for the appointment of appraisers, and further moved that debtor's exemptions be set off to him. The motion was granted and the appraisers were appointed by agreement of all parties present.

5. The appraisers filed their report on July 31, 1940, which was approved, and the Commissioner set off to debtor his exempted property as provided by the Act.

6. At the hearing of August 13, 1940, the debtor, through his attorney Coulson, joined the creditors in a motion asking that a reasonable rental for the real and personal property be fixed. A rental was fixed and all proceedings stayed for a three-year period as provided by the Act. It was at this hearing that the stipulation as to the perishableness of the security of the Three Creditors was entered into.

7. At the hearing of September 7, 1940, debtor was present in person, and was represented by not only Coulson but one U. G. Ward, an attorney of Shelbyville, Illinois. At that hearing a full opportunity was given debtor to indicate his position before the entry of the order of sale. No offer of proof was made on the question of the sale of the cattle. No request for time to put in further or additional proof was asked for at that hearing. Prepared orders were then submitted by said Three Creditors (in the presence of debtor and his two counsel), authorizing the sale of the personal property, which orders were then signed in their presence. It is obvious that one of the reasons for the filing of the petitions for sale by said Three Creditors was that their combined claims as filed aggregate \$2,243.80, whereas the appraised value of all of debtor's cattle was \$1,330.00.

Any court must necessarily require that the business of its office be conducted through attorneys, so that an

orderly procedure may be followed. An examination of the various hearings in this cause indicates clearly that at all times and at all hearings, the debtor was adequately and fully represented. Debtor at all times had full and ample opportunity to present his evidence or any defense he might desire, but for reasons best known to himself and his counsel, did not do so. The order of September 7, 1940, was signed in the presence of the debtor and his two counsel, and was accessible to them at all times, and notwithstanding such opportunity, no objections were made and no appeals taken within the time provided by law.

Of all the various hearings held in this cause, debtor only attended two. The Commissioner on numerous occasions requested the presence of the debtor and J. E. Dazey so that more might be accomplished at each hearing.

If debtor feels that he has not been properly or adequately represented, it is not because of the number or ability of his counsel. It is conceivable that debtor might feel the same way about any counsel he might subsequently engage, and might again petition for a rehearing on that ground. Certainly no purpose would be served by again trying the case with new or different counsel.

Much is made in the rehearing petition of the illness of J. E. Dazey. This condition of Dazey's health was first called to the Commissioner's attention by this petition. At no time during the proceedings was a continuance or extension of time requested because of it. It appears from the petition alone that Mr. Dazey suffered a stroke of apoplexy on May 21, 1940, or more than a month before

the first meeting of creditors. If he did not feel able to carry on his work, he had an abundance of time to engage other counsel.

It appears also, from the rehearing petition only (Paragraph 4) that said debtor was not informed of the order of September 7, 1940. Debtor attended this hearing personally, and was represented by his counsel Robert E. Coulson and U. G. Ward. In passing, it must be said of the debtor that he is an unusually intelligent man, having at one-time been President of the Pure Milk Association of the Chicago area. He must certainly be held accountable for what actually transpires in his presence.

The Commissioner feels that inasmuch as a stipulation was entered into relative to the perishableness of the security of the Three Creditors, that no decision on this point need be made. Suffice it to say that debtor himself alleges in his rehearing petition that "he did not, as stated in the order of September 7, 1940, since the filing of his petition under Section 75 (a) to (r) in the District Court on February 28, 1940, sell two of the cows claimed by Hartman & Son under their conditional sales contract. He says that one of said cows became infected with, Mastitis, a dangerous and infectious disease of dairy cows, and that her usefulness as a dairy cow became thereby so impaired, that to save as much of her value as possible, he sold her for beef, according to the best practice of dairying." This would appear to be an admission of their perishableness.

Conclusion.

From the facts above stated, it is the decision of the Conciliation Commissioner, that the petition for rehearing

of the order of September 7, 1940, should be and the same is hereby denied.

Enter:

Walter M. Givler,

Conciliation Commissioner.

September 30, 1940.

And on, to wit, the 9th day of October, A. D. 1940, came the Debtor by his attorneys and filed in the Clerk's office of said Court his certain Petition for Review of Three Orders in words and figures following, to wit:

**PETITION FOR REVIEW OF THREE ORDERS DATED
SEPTEMBER 7, 1940, WHICH BECAME
FINAL SEPTEMBER 30, 1940.**

Your petitioner is the farmer debtor herein and as such was a party to the following certain farmer debtor proceedings pending before Honorable Walter M. Givler as the conciliation commissioner in charge thereof, namely:

1. The petition of Hartman and Son for reclamation of personal property filed August 7, 1940, with said conciliation commissioner as shown by the docket of said conciliation commissioner.
2. The petition of Algonquin State Bank for reclamation of personal property filed August 7, 1940, with said conciliation commissioner as shown by the docket of said conciliation commissioner.
3. The petition of Northern Illinois Finance Corporation for reclamation of personal property filed August 10, 1940, with said conciliation commissioner as shown by the docket of said conciliation commissioner.

Upon the hearing thereof certain final orders were made by the said conciliation commissioner as follows:

"In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Farmer Debtor. Gen. No. 72557. Proceedings Under Section 75 Sub-Section S.

1. This matter coming on this 7th day of September, A. D. 1940, to be heard upon the verified petition of Hartman & Son, this day set for hearing before the undersigned as Referee, and the petitioners, Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman & Son, being present in open Court by their attorney, Elmer C. Tobin, and the debtor, Henry Anton Pfister, being present in open Court by Robert Coulson, his attorney, and all other parties hereto being also represented, and the Court, being fully advised in the premises, Finds:

2. That it has full and complete jurisdiction of the parties to and the subject matter in said petition contained; that all parties hereto have had full and complete notice of the filing of said petition by said petitioners and of the hearing to be had thereon on this date, and the said debtor, through his attorney, having stipulated and agreed in open Court that the dairy cattle in said petition mentioned were and are perishable property within the meaning of Section 75, Sub-Section (s), paragraph 2 of this Act.

3. That since the filing of said petition by said debtor herein, the said debtor has, according to his own admissions, sold two of the cows claimed by the peti-

tioners; Hartman & Son, under their conditional sales notes filed herein, and has also sold other cattle covered by chattel mortgages held by others of the creditors herein; that said cattle in said petition of Hartman & Son described, on the date said note was given, constituted scant and meager security to said petitioners for the amount evidenced by said note; that said cows are cows of mature or more than mature age, and if allowed to remain in said dairy and with the said debtor under the terms of this Act, the security of the petitioners, Hartman & Son, would be materially reduced and might be, by virtue of the conduct of the debtor aforesaid, completely lost; that said cattle constitute perishable property as
(end of page 1)

stipulated by the debtor herein, and it would be inequitable or unwarranted not to allow a liquidation of said security as perishable property as in and by said Act provided.

4. That said cattle in said petition and conditional sales note described were not selected by or set off to the above named debtor as exempt property herein and that said debtor made no claim to said property as exempt; that the best interest of said petitioners and secured creditors herein require the sale of said property in said petition described in accordance with paragraph 2 of subsection S of Section 75 of the Bankrupt Act; that William Chandler is a proper and suitable person to make such sale as an officer hereof.

It Is Therefore Ordered, Adjudged and Decreed That William Chandler be and he is hereby appointed the of-

ficer of this Court to sell the following described property mentioned in the conditional sales notes and petition of said petitioners and attached thereto as Exhibit Z, viz.:

Four dairy cows bearing ear tag numbers as follows:

3274711

BN12098

295720

H189

Also one Guernsey cow bearing no ear tag number but being at present in the herd of said debtor and on his farm.

that said sale be made at public auction on a date and hour to be selected by said officer, for cash and at a price equaling at least two-thirds of the appraised value as placed thereon by the appraisers herein; that said sale be made in accordance with the terms and conditions as laid down by said Sub-Section S of Section 75, and that notice thereof be given by said officer by setting up written or printed notices thereof, giving the time, place and terms of such sale, in at least four of the most public places in Lake County, Illinois, and one at the place where such sale is to be had, at least five days prior to such sale, and that he shall also mail a similar copy of such notice to the petitioners and said debtor at least five days prior to such sale; that such officer herein appointed to conduct said sale make due report of such sale and expense thereon to the undersigned within two weeks

(end of page 2)

thereafter and bring such money so realized from such sale into Court to abide further order thereon.

Entered this 7th day of September, A. D. 1940.

Walter M. Givler,
Referee."

(2)

"In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Debtor. No. 72557. Proceedings for Composition or Extension.

Order.

This matter coming to be heard upon the Petition of the Algonquin State Bank and the Court having heard the evidence and being advised in the premises finds:

1. That the Algonquin State Bank held a chattel mortgage on certain personal property which was the property of Henry Anton Pfister, being described as follows, to-wit:

Five Guernsey cows, 5 yr. old, wt. 1000 lb. each

One (1) Swiss cow, 4 yr. old, wt. 1050 lb.

One (1) Roan cow, 6 yr. old, wt. 1100 lb.

One (1) Red cow, 6 yr. old, wt. 1200 lb.

Ten (10) Holstein cows, 5-6 yr. old, wt. 1150 lb. each

Three (3) Holstein cows, 8 yrs. old, wt. 1100 lb. each

Two (2) Swiss heifers, 1 yr. old, wt. 500 lb. each

One (1) Holstein bull, 1 yr. old, wt. 500 lb.

One (1) Swiss bull, 18 mo. old, wt. 750 lb.

Three (3) black horses, 12-14 yr. old, wt. 1500 lb. each

Five (5) Mixed Colors Brood Sows, wt. 200 lb. each

Farm Machinery valued at \$2000.00

(end of page 1)

Crops grown in 1939.

2. The Court further finds that The Algonquin State Bank has filed a claim in the amount of Seven Hundred Sixteen (\$716.00) dollars and said claim has been allowed in the amount of Seven Hundred Sixteen (\$716.00) Dollars, and

3. The Court further finds that the personal property described in said Petition should be sold and that fifteen (15) days' notice should be given of said sale and that said sale should be properly advertised and that William Chandler be appointed to act in behalf of this Court in conducting said sale and that the money derived from said sale be retained by this Court and be distributed in accordance with Order of this Court.

Walter M. Givler,
Referee."

(3)

"In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Debtor. Gen. No. 72557.

Order.

This cause coming on to be heard this 7 day of September, A. D. 1940, upon the verified petition of the Northern Illinois Finance Corporation, a Delaware corporation, this day set for hearing by the undersigned, as Referee, and the petitioner, Northern Illinois Finance Corporation, A Delaware corporation, being present in open court, by their attorneys, Geo. D. Carbary and Almore H. Teschke, and the debtor, Henry Anton Pfister, being present in open court by Robert Coulson, his attorney, and other parties hereto being also represented,

and the Court being fully advised in the premises and having full and complete jurisdiction of the parties to and the subject matter in said petition contained, and all parties having had full and complete notice of the filing of the petition of the petitioner and of the hearing to be had thereon on this date, The Court Doth Find:

1. That on or about the 3rd day of January, 1940, the debtor, Henry Anton Pfister, under the name and style of H. A. Pfister, entered into a note in the amount of \$1,234.40, with interest thereon at the rate of 7% per annum from maturity until paid, payable to the order of K. M. Snyder in principal payments of sixteen equal monthly installments of \$77.15 each on the 5th day of each month beginning with the 5th day of February, 1940, until the said principal with interest is paid; that said note was secured by a chattel mortgage of even date therewith upon the following described goods and chattels:

(end of page 1)

20 cows and 1 bull:

79783

H-189

295720

DY38382

70825

70824

60442

EO-34787

74711

J556742

(EX19566-Ch59174)

79784

79782

EV84048

BW20230

BO55313

V48837

BN12098

79786

1 Gur. no tag

1 Bull

2. That on said 3rd day of January, 1940, the said K. M. Snyder duly endorsed said note and chattel mortgage without recourse to the Northern Illinois Finance Corporation, DeKalb, Illinois, and on the 8th day of January, 1940, the said chattel mortgage was recorded in the Recorder's Office of Lake County, Illinois, as Document No. 472496; that the said debtor has made payments to the petitioner herein under and by virtue of the terms of said note and chattel mortgage and that there now remains due and owing to your petitioner herein from said debtor upon said note and chattel mortgage the sum of \$771.50, together with interest thereon at the rate of 7% per annum from and after May 5, 1941.

3. That the above named debtor, on or about the 25th day of April, 1940, filed his petition in this court praying that he be afforded an opportunity to effect a composition or extension of time in which to pay his debts under Section 75 of the Bankruptcy Act; that a first hearing under Sub-sections A to R of said Section 75 was held, at which time a proposal to the creditors of the debtor was duly made in writing by the said debtor; that said proposal was not accepted and thereupon the said debtor filed his petition herein under sub-section S of said Section 75 and requested that he be adjudicated a bankrupt; that thereupon, on motion of said debtor, appraisers were appointed to appraise his personal property and to set off his exemptions.

4. That listed in the appraisal of the estate of the debtor are 11 dairy cows, ear tag numbers:

79783

H189

295720

70825

70824
Ch59174
79782
BN12098

EO-34787
79784
V48837

(End of page 2).

and 1 bull, ear tag number 79786, all of which are covered and included in the chattel mortgage hereinabove referred to and given by said debtor to the petitioner herein; that by virtue of the appraisal so made it is indicated that the said debtor has disposed of the following cows, ear tag numbers:

DY38382
74711
EV84048
BQ55313

60442
J556742
BW20230

and 1 Guernsey with no tag and 1 bull, which cows and bull were likewise included in the aforesaid chattel mortgage; that at the first hearing of creditors the said debtor, Henry Anton Pfister, stated under oath that all of the cows and bull contained in the chattel mortgage aforesaid were still upon the premises of the debtor, with the exception of 1 cow which the said debtor had sold and disposed of without authority or consent of the petitioner, Northern Illinois Finance Corporation.

5. That the debtor, Henry Anton Pfister, by and through his attorney, Robert Coulson, has stipulated and agreed in open court that the dairy cattle in said petition mentioned and contained were and are perishable property within the meaning of Section 75, subsection S, paragraph 2 of the Bankruptcy Act; that by the acts of

the debtor, the security of the petitioner, Northern Illinois Finance Corporation, has already been reduced, depreciated and dissipated; that the appraisal, as returned to this court, indicates that if the said cattle are allowed to remain in the possession of the debtor under sub-section S of Section 75 as aforesaid, that it will create a possible total loss to the petitioner of all security held by it on said cattle; that said cattle being allowed to remain in said dairy would under the terms and conditions of this Act, be rendered entirely useless for dairy purposes unsalable and fit only for slaughter purposes at a considerably reduced value, most of said cows already being cows of mature or more than mature age; that if said cattle remain in the possession of the said debtor, the security of the petitioner, Northern Illinois Finance Corporation, will be dangerously impaired.

(end of page 3)

6. That said cattle in said petition contained were not selected by or set off to the debtor, Henry Anton Pfister, as exempt property herein, and that said debtor made no claim to said property as exempt; that the best interest of the petitioner and secured creditors herein require the sale of said property in said petition described, in accordance with Paragraph 2 of sub-section S of Section 75, of the Bankruptcy Act.

7. Wherefore, It Is Ordered, Adjudged and Decreed:

(a) That the said cattle hereinabove referred to are hereby declared perishable property within the meaning

of Section 75, sub-section S, Paragraph 2 of the Bankruptcy Act.

(b) That it is for the best interests of the petitioner, Northern Illinois Finance Corporation, and all parties concerned that the dairy cattle hereinabove described be sold as perishable property in accordance with the provision of Section 75, sub-section S of the Bankruptcy Act.

(c) That William Chandler be and he is hereby appointed the officer of this Court to sell the following described property mentioned in the chattel mortgage and the petition of the Northern Illinois Finance Corporation, to-wit:

20 cows and 1 bull:	(EX19566-CH59174)
79783	79784
H-189	79782
295720	EV84048
DY38382	BW20230
70825	BO55313
70824	V48837
60442	BN12098
EO-34787	79786
74711	1 Gur. no tag
J556742	1 Bull

That the debtor, Henry Anton Pfister, account for the present whereabouts or disposition of the following numbered cattle which are not accounted for in the appraisal returned to this Court:

DY38382	60442
74711	J556742

EV84048

BW20230

BO55313

1 Gur. no tag

and that if such cattle as aforesaid have lost their ear tag numbers and have been given new ear tag numbers contained in the debtor's appraisal, that such cattle with their new tag numbers be included within the purview and purpose of this order;

That said sale be made at public auction on a date and hour to be selected by said officer for cash and at a price equaling at least two-thirds of the appraised value as placed thereon by the appraisers herein; that said sale be made in accordance with the terms and conditions as laid down by said subsection S of Section 75, and that notice thereof be given by said officer by setting up written or printed notices thereof, giving the time, place and terms of such sale in at least four of the most public places in Lake County, Illinois, and one at the place where such sale is to be had, at least five days prior to such sale, and that he shall also mail a similar copy of said notice to the petitioner and said debtor at least five days prior to such sale; that such officer herein appointed to conduct said sale make due report of such sale and expense thereof to the undersigned within two weeks thereafter and bring such monies so realized from such sale into court to abide the further orders of this Court.

Entered this 7 day of September, A. D. 1940.

Walter M. Givler,
Referee."

Your petitioner duly filed his petition and his amended petition seeking a rehearing of said final orders to which said petition and amended petition the said Hartman and Son, said Algonquin State Bank, and said Northern Illinois Finance Corporation filed their common answer and to which said farmer debtor filed his reply. Said application for rehearing and the pleadings thereto were heard by said conciliation commissioner on September 26, 1940, and on September 30, 1940, said conciliation commissioner rendered and entered his opinion and decision thereon denied said application for rehearing. Whereby said orders of September 7, 1940, became final on September 30, 1940.

Said orders are erroneous in the following respects, namely:

1. In finding and holding that the dairy cattle of the farmer debtor were or are perishable property under Section 75 of the Bankruptcy Act for the relief of farmer debtors.

2. In that they were issued without submission of evidence prior thereto.

3. In that said orders were not submitted to counsel for said farmer debtor or to him for examination before entry thereof.

4. Said farmer debtor being a farmer and not familiar in any respect with legal procedure or substantive law pertaining to said proceedings and matters he was without legal representation as a result of the sudden and

unforeseen serious illness and incapacity of his sole counsel who was retained by him, namely J. E. Dazey, an attorney at law, and who before and during the pendency of said matters suffered an attack of apoplexy with high blood pressure of 232 which remained at 192 on September 18, 1940. Without the authorization of said farmer debtor certain statements were claimed to have been made by one Robert E. Coulson who was instructed by said Attorney Dazey only to file papers, which statements have been held to have been prejudicial to said farmer debtor and were held to warrant the finding and holding that said farmer debtor's cattle were perishable property:

5. By said unfortunate and unforeseen circumstances said farmer debtor has not had due process of law in said proceedings.

6. Said farmer debtor has been unable to present either evidence of facts or legal authorities or arguments in said matters whereby he could maintain his rights under Section 75 of the Bankruptcy Act under which said proceedings were and are pending.

Wherefore petitioner prays that said order be reviewed and reversed and for such order as may be just and right and that he be restored to all things he has lost by reason of said errors.

(Duly verified.)

And on, to wit, the 15th day of October, A. D. 1940, came the Referee and filed in the Clerk's office of said Court his certain Certificate of Referee in words and figures following, to wit:

**CERTIFICATE OF CONCILIATION COMMISSIONER ON
PETITION TO REVIEW THREE ORDERS OF
SEPTEMBER 7, 1940.**

Filed October 15, 1940, in District Court.

Now comes Walter M. Givler, duly appointed, qualified and acting Referee in Bankruptcy in the matter of the above cause, and duly certifies to the Judges of said District Court of the United States the following:

(1) That said farmer debtor Henry Anton Pfister filed with the undersigned on October 9, 1940, an instrument entitled a petition for review of three orders dated September 7, 1940, and the order of September 30, 1940, which petition, so filed, is attached hereto and made a part of this certificate.

(2) That no petition for review was filed by said farmer debtor of the orders dated September 7, 1940, within the ten days, as provided by Section 39, Clause 10-c, of the Bankruptcy Act. However, on September 20, 1940, said farmer debtor filed with the undersigned his petition for rehearing of said orders entered on September 7, 1940, and thereafter, on September 23, 1940, filed his amendment to said petition for rehearing of said orders of September 7, 1940, which petition for rehearing and amendment thereto are attached hereto and made a part hereof. That thereafter, on September 26, 1940, an answer to said petition for rehearing was duly filed by the following creditors: Algonquin State Bank, Arthur Hartman and Harvey Hartman, doing business as Hartman and Son, and Northern Illinois Finance Corporation, which answer, so filed, is attached hereto and made a part hereof. There was filed to said answer

on said September 26, 1940, by said farmer debtor his reply. Said reply, so filed, is attached hereto and made a part hereof.

(3) That on said 26th day of September, 1940, said petition for rehearing and the answer thereto and the reply to said answer were fully heard and considered in open court by the undersigned and duly continued for decision to September 30, 1940, and on said last mentioned date the undersigned denied said petition for rehearing, all as per written opinion and decision of the undersigned and the order of the undersigned entered and filed herein on said 30th day of September, 1940, which opinion and order are attached hereto and made a part hereof.

(4) The questions presented may be stated as follows:

On the petition of three creditors, namely, Northern Illinois Finance Corporation, who filed its petition on August 10, 1940, Arthur Hartman and Harvey Hartman, doing business as Hartman & Son, who filed their petition on August 7, 1940, and Algonquin State Bank, who filed its petition on August 7, 1940, held certain liens against certain personal property of said farmer debtor consisting of cows and asked for the sale of said cows as perishable property, within the meaning of Section 75, sub-section "S," paragraph 2, of the Bankruptcy Act. That after stipulation was made that such dairy cattle were perishable property within the meaning of said Act and upon a hearing had on September 7, 1940, three orders were entered directing the sale of said dairy cattle. Said original petitions, so filed, and the orders entered

on September 7, 1940, are attached hereto and made a part of this certificate. That thereafter, as already stated, no petition for review of said orders of September 7, 1940, was filed within ten (10) days, but on September 20, 1940, a petition for rehearing was filed by said farmer debtor, which petition for rehearing was amended on September 23, 1940. After answer filed as above stated, the principal question raised by said petition for rehearing was whether or not the said farmer debtor had been properly represented in this matter by his counsel and, after hearing on September 26, 1940, as to such matters, the undersigned, by his order on September 30, 1940, denied said petition for rehearing of said orders and rendered and filed his opinion, which is attached hereto, and thereafter said farmer debtor, on October 9, 1940, filed his petition for review as above stated and the undersigned hereby certifies to the Court the foregoing for such decision and order as it may deem proper.

Respectfully certified as aforesaid,

Walter M. Givler, .

Referee as aforesaid.

And on, to wit, the 17th day of October, A. D. 1940, came the Algonquin State Bank by its attorneys and filed in the Clerk's office of said Court its certain Special Appearance in words and figures following, to wit:

SPECIAL APPEARANCE OF ALGONQUIN STATE BANK, NORTHERN ILLINOIS, ETC., AND HARTMAN AND SON, AND MOTION TO DISMISS PETITION TO REVIEW ORDERS OF SEPTEMBER 7, 1940.

Filed October 17, 1940, in District Court.

Now comes Algonquin State Bank, an Illinois banking corporation, by Henry L. Cowlin, its attorney; Northern Illinois Finance Corporation, a Delaware corporation,

by Carbury & Teschke, its attorneys; Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman & Son, by Elmer C. Tobin, their attorney, and as to the portion of the petition for review of the three orders dated September 7, A. D. 1940, ask that said petition be dismissed for the reason that this Court has no jurisdiction to entertain such part of said petition, and as grounds therefor, say:

That said orders were in accordance with the allegations in said petition entered before the Honorable Walter M. Givler, Conciliation Commissioner and Referee, to whom this case was referred, on the 7th day of September, A. D. 1940; that said orders were entered in open Court in the presence of said bankrupt and in the presence of his attorneys of record, Robert E. Coulson and U. G. Ward; that no exception or objection was made thereto at the entry thereof, nor was any petition for review of said orders filed with said Referee or Conciliation Commissioner within the time and in accordance with the rules of Court in such case made and provided, by virtue whereof said orders became final within the time prescribed by said rules, and are not reviewable by this Court under the above mentioned petition.

Wherefore, the undersigned pray that the above petition for review as same pertains to said orders of September 7, A. D. 1940, be dismissed at farmer debtor's costs.

Algonquin State Bank,
an Illinois banking corporation,
Northern Illinois Finance Corporation,
a Delaware corporation.

(Duly verified.) Hartman and Son.

And on, to wit, the 17th day of October, A. D. 1940, came the Algonquin State Bank by its attorneys and filed in the Clerk's office of said Court its certain Answer to Petition for Review in words and figures following, to wit:

ANSWER TO THE PETITION FOR REVIEW OF THE THREE ORDERS OF SEPTEMBER 7, 1940, SO FAR AS SAME APPLIES TO THE ORDER OF SEPTEMBER 30, 1940.

Now comes Algonquin State Bank, an Illinois banking corporation, by Henry L. Cowlin, its attorney; Northern Illinois Finance Corporation, a Delaware corporation, by Carbary & Teschke, its attorneys; Arthur Hartman and Harvey Hartman, co-partners doing business as Hartman & Son, by Elmer C. Tobin, their attorney, and for answer to the petition for review of the three orders of September 7, A. D. 1940, so far as same applies to the order of September 30, A. D. 1940, say:

1. They admit the allegations in paragraphs 1 and 2 of said petition contained.

2. They admit the first paragraph of paragraph 3 of said petition contained, and say as to the alleged copy of the various orders contained on pages 2, 3, 4, 5 and 6, that they assume said orders have been correctly set forth therein and aver that if same are a correct copy of the orders now on file with said Conciliation Commissioner, they are admitted in the form as therein set forth.

3. As to the last paragraph on page 6 of said petition contained, they admit that a petition for rehearing was filed before said Walter M. Givler, Referee, but aver that said petition was not filed within the time pro-

vided by law and rule of Court and was filed subsequent to the time allowed for a review of such order. They admit that a hearing was had on said petition on or about the date in said petition for review mentioned. They admit that said conciliation commissioner rendered his opinion and decision thereon, but aver that the alleged order attached to said petition for review is not the full and complete order of said conciliation commissioner but that same must be supplemented in accordance with the reference therein contained by the opinion and decision of such Referee, a copy of which is hereto attached and marked Exhibit A. They deny that said order of September 7, A. D. 1940, became final on the 30th day of September, A. D. 1940, and on the contrary aver that said order became final when no petition for review of said order was filed with said Referee and Conciliation Commissioner within the time prescribed by statute and rule of Court in such case made and provided.

4. They deny that said order of September 30, A. D. 1940, is erroneous in the manner and form as in said petition for review set forth, and as to sub-paragraph 1 of paragraph 3, they deny the allegation therein contained.

5. As to sub-paragraph 2 of said paragraph 3, they say that the undersigned creditors were present in open Court on the date set for the hearing on the petition upon which said orders were predicated, and had with them at such time witnesses to make proof of the facts in said petition alleged, had said witnesses sworn and were about to submit such evidence when farmer debtor,

through his counsel; Robert E. Coulson, waived the submission of such evidence, and said farmer debtor, having so waived the production of said evidence when witnesses were in open Court ready to make such proof, should not now be heard to complain that no evidence had been introduced prior to the entry of said orders.

6. As to sub-paragraph 3 of said paragraph 3, the undersigned creditors say that said farmer debtor was present in person and by his counsel, Robert E. Coulson and U. G. Ward, at the time of the entry of said orders, entered into the discussion thereof and commented upon the entry of said orders at such time; that said orders were entered in their presence and they had ample opportunity, if they so desired, to examine said orders in full prior to or at the time of the entry thereof.

7. As to sub-paragraph 4 of said paragraph 3, they say that said farmer debtor is a man of unusual intelligence, having been for many years a director and treasurer of the Pure Milk Association and for some years prior to his filing of his petition herein, having been the chief executive and president of said Pure Milk Association, an association dealing with thousands of farmers and millions of dollars per month, and having executed said several offices with dispatch and correctly cannot be imposed upon this Court as the ordinary run of farmer; that during such connection with said Pure Milk Association, he had contact with an acquaintance with many of the reputable and leading members of the Bar of this District. He was a man capable of employing and selecting outstanding counsel; that if with all his qualifications, he selected a man physically unable to

handle his matters in this proceeding, that was a matter of his own choosing; and the undersigned creditors cannot be charged with the results of his selection; that the said J. E. Dazey, alleged in paragraph 4 as being his attorney, was according to certain affidavits on file herein, afflicted with the alleged malady on the 12th day of May, A. D. 1940, more than one month prior to the first meeting of creditors herein; that if said Dazey's condition was such that he was unable to attend to the interests of his said client during the course of this proceeding, it was the duty of the said Dazey to withdraw as attorney for such farmer debtor so that other counsel could have been employed, or to have hired other counsel to take care of the interest of the farmer debtor herein; but that such inability or laxity or negligence on behalf of said Dazey cannot reflect upon or be pleaded against the undersigned creditors herein; that if said farmer debtor has any complaint in that regard, such complaint should be lodged in the State courts as a matter of malpractice against the said Dazey rather than being raised as an issue in this proceeding.

8. The undersigned say that they are inadvised as to the nature or extent of the employment of Robert E. Coulson as attorney of record for said farmer debtor, but aver and so state the fact to be that any alleged understanding existing between the said Coulson, the said Dazey or the said farmer debtor, is immaterial to this proceeding; that the said Robert E. Coulson is a duly licensed and practicing attorney, duly admitted, as the undersigned are advised, to practice in the Courts of the State of Illinois and in this Court; and having

been so admitted, the undersigned have a right to assume that he has the qualifications therefor; that the said Robert E. Coulson was the only resident attorney of this District representing said farmer debtor; that all notices of all proceedings were served upon the said Robert E. Coulson in accordance with the rules of this Court, and that such notice having been served on the said Robert E. Coulson, constitutes notice on the said J. E. Dazey and on the farmer debtor herein of all matters and things transpiring in these proceedings; that the said J. E. Dazey had notice of the first meeting of creditors called herein, and that all hearings subsequent to such first hearing were continuations from said first hearing; that said Coulson, resident attorney of record for said farmer debtor, was present at the first meeting of creditors herein and attended each and every adjournment thereof to and including the hearing of September 7, A. D. 1940, all of which will more fully appear by reference to the Referee's opinion and decision on petition for rehearing of orders of September 7, A. D. 1940, filed herein and hereto attached and made part of this answer and marked Exhibit A.

9. As to sub-paragraph 5 of said paragraph 3, the undersigned deny each and every allegation thereof.

10. As to sub-paragraph 6 of said paragraph 3, the undersigned say that if said farmer debtor has been unable to present either evidence of facts or legal authorities or arguments in said matter, that such inability has been of his own choosing; that all opportunity has been afforded him to present, at any and all hearings herein, all evidence

of facts and all legal authorities or arguments which he may have had.

11. As to sub-paragraph 7 of said paragraph 3, they deny each and every allegation therein contained.

Wherefore, the undersigned pray that said petition for review of the order of September 30, A. D. 1940, be dismissed at farmer debtor's costs.

Northern Illinois Finance Corporation,
a Delaware corporation,
Hartman & Son,
a copartnership.

Algonquin State Bank,
Illinois banking corporation.

(Duly Verified.)

And on, to wit, the 16th day of September, A. D. 1940, came the Debtor by his attorneys and filed in the Conciliation Commissioner's office of said Court his certain petition for rehearing in words and figures following, to wit:

PETITION OF FARMER DEBTOR FOR REHEARING OF
ORDER OF AUGUST 13, 1940.

Filed September 16, 1940, with Conciliation Commissioner.

To the Honorable Walter M. Givler, Conciliation Commissioner in the above entitled matter.

Said farmer debtor respectfully shows:

1. This matter has been pending by reference from the Honorable William H. Holly, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to the said farmer debtor's

amended petition under said Section 75 (s) since July 23, 1940.

2. On August 13, 1940, an order was entered pursuant to said reference which provides that said farmer debtor shall retain possession of his property (other than his exemptions) for a period of three (3) years from April 26, 1940.

3. Said order further provides for rental payments during said three years of \$2,125.00 per year payable in semi-annual installments of \$812.50 the first year, \$1,062.50 the second year, and \$1,312.50 the third year; the first installment to be paid on October 26, 1940, being a total of \$6,375.00 to be paid as rental for three years.

4. Said order further provides for certain payments to be made quarterly, in addition to said rental, in installments of \$406.25 quarterly the first year (being a total of \$1,625.00 the first year); of \$531.25 the second year (being a total of \$2,125.00 the second year); and of \$656.25 the third year (being a total of \$2,625.00 the third year), or a total for the three years of \$6,375.00 in addition to total rental payments of \$6,375.00 during the same period which is a grand total of all rental and additional payments of \$12,750.00 for the three years, being an average annual payment of \$4,250.00 per year for each of the said three years.

5. The conciliation commissioner's docket in this said matter contains under the dates of August 13, 1940, August 30, 1940, September 3, 1940, and September 7, 1940, the following entries:

"August 13, 1940. On motion of claimants present, all claims in file as of this date allowed for their respective amounts as filed (Dft). Leave given Hartman and Son to substitute copies of original notes; motion by E. C. Hook: Algonquin State Bank and Northern Illinois Finance Company that the rent of the farm and personal property be set at the sum of \$1,625.00 for the first year, \$2,125.00 for the second year and \$2,625.00 for the third year, payable in semi-annual installments, the first payment to be due and payable October 28, 1940. In addition debtor is to pay \$1,625.00 the first year, on the principal amount of both secured and unsecured claims (as their interests may appear), in quarterly installments; \$2,125.00 the second year in quarterly installments; and \$2,625.00 the third year in quarterly installments; the payments of the first quarterly installment of 1940 is hereby extended to August 28, 1940: Hearing on motion; motion allowed as per order (Dft.). Objection by debtor, hearing thereon and objection overruled. Motion by E. C. Hook and Emil Geest that the buildings be insured for fire and windstorm to the full insurable value, the insurance to be secured by Joseph N. Sikes in standard stock insurance companies and that he be reimbursed out of the first rent received in proportion to their respective interests. Hearing on reclamation petition and stipulations by the debtor and each of the following claimants: Hartman and Son, Northern Illinois Finance Company and the Algonquin State Bank, that the personal property described in the petition is perishable within the meaning of paragraph number 2, subsection (s) of Section 75 of the Bankruptcy Act; it is further stipulated that the property

described in the reclamation petition is not at this time claimed by bankrupt as exempt property. Hearing on all further motions and petitions continued to August 30, 1940, at 10 a. m. DST.

August 13, 1940. Order approving appraisers' report filed.

August 13, 1940. Order setting aside debtor's exemptions filed.

August 30, 1940. Hearing on all above matters continued to September 7, 1940, 10 a. m. DST.

September 3, 1940. Secured proof of debt of Michael H. O'Boyle in the amount of \$432.76 filed.

September 7, 1940. Further hearing had and petition of Algonquin State Bank, Hartman and Son and Northern Illinois Finance Company filed praying for order authorizing sale of certain cattle contained in conditional sales contract and chattel mortgage as perishable property, prayer of petitions granted as per order (Dft.)."

6. By the said conciliation commissioner's order the report of appraisal of the real and personal property and setting off exemptions of and to said farmer debtor was approved as follows:

Real estate consisting of a gross acreage of 87 1/2 acres of which approximately 5 acres is subject to drainage easement

\$16,000.00

Household and garden utensils	\$107.00
3 Horses	90.00
4 Yearling heifers	60.00
18 Dairy cows	1170.00
1 Bull	100.00

20 Hogs	60.00	
130 Poultry	50.00	
1 Automobile	275.00	
Farming equipment	274.00	
Total of household goods, garden utensils, livestock, automobile and farming equipment	\$2186.00	2,186.00

of which the following personal property was so set off as exempt:

Household and garden utensils	\$107.00	
Equity in automobile	44.00	
Farm equipment	249.00	
Total personal property exemption	\$400.00	400.00

Thus leaving, after setting of said exemptions the following personal property in said estate subject to the provisions of Section 75:

3 Horses	
4 Yearling heifers	
18 Dairy cows	
1 Bull	
20 Hogs	
130 Poultry	
1 Automobile (of which \$44. is exempt out of a total valuation of \$275).	
Farming equipment to the value of \$25 (\$274 Total value, \$249 exempt).	
Total value of personal property not exempt	\$1,786.00

Of said personal property the only revenue producing portion is 18 dairy cows while fresh (each cow being out

of production and a dead expense for an average period of two to four months each year); 20 hogs which can produce nothing except sale value once, and 130 poultry; said dairy cows being practically the sole income producing chattels.

Said real estate is not capable of producing sufficient feed forage and bedding for said livestock and therefore in itself produces no direct revenue, or if there be any it is more than off set by the necessity of purchasing feed, forage, bedding, medicines, and veterinary services for said livestock.

7. Said order further provides for a stay of proceedings against the said farmer debtor or his property for a period of three years from April 26, 1940.

8. Said order bears the written approval of three creditors of said farmer debtor, namely, Northern Illinois Finance Company, Algonquin State Bank, and E. C. Hook; and no other approval.

9. Said order was not presented to said farmer debtor or to his counsel and was not approved by him or by his counsel.

10. No objection was entered by the farmer debtor to said order and no hearing on any such objection has been had.

11. Said farmer debtor at all times during the pendency of said reference desired, and he still desires, to present evidence upon the subjects of said order but he has not had opportunity to do so.

12. The evidence to be so presented, if opportunity be afforded to present it, will demonstrate that said sums of rental and said sums of additional payments are not pursuant to law.

13. Said period fixed for the retention of possession of his property by the farmer debtor is contrary to law.

14. Said period fixed for the said stay of proceedings is contrary to law.

Wherefore said farmer debtor respectfully prays that Your Honor as said Conciliation Commissioner rehear the said matter in so far as it relates to the said order and that he be given an opportunity to present his evidence relating thereto.

Henry Anton Pfister,
Farmer Debtor.

(Duly verified.)

And on, to wit, the 23rd day of September, A. D. 1940, came the debtor by his attorneys and filed in the Conciliation Commissioner's office of said Court his certain Amendment to Petition for Rehearing in words and figures following, to wit:

**AMENDMENT TO PETITION FOR REHEARING OF
ORDER OF AUGUST 13, 1940.**

Filed September 23, 1940, with Conciliation Commissioner.

Now comes the farmer debtor and amends his Petition for Rehearing of the order of August 13, 1940, by adding thereto the following:

15. Said farmer debtor was from the filing of his petition herein on February 28, 1940, represented by J. E. Dazey, attorney at law, of Findlay, Illinois, who obtained the services of Robert E. Coulson of Waukegan, Lake County, Illinois, a young attorney beginning to practice at this time, and who was not at any time authorized to do anything in said cause except as authorized by said Attorney Dazey, that is, to file papers prepared by said Attorney Dazey and mailed to him, and up to September 7, 1940, said Attorney Dazey did not know of any stipulations or agreements in reference to this Cause. Said J. E. Dazey, the said farmer debtor's counsel, became seriously ill on May 21, 1940, with high blood pressure which resulted in a stroke of apoplexy, since which time he has been unable to attend to any case in court and has been able to do only a little office work, and his blood pressure since said stroke has been as high as two hundred thirty-two and on September 18, 1940, was still one hundred ninety-two.

Said farmer debtor attaches hereto a copy of the affidavit of said Attorney J. E. Dazey which he makes a part of this petition for rehearing. The original of said affidavit has been filed with Your Honor as said conciliation commissioner on September 20, 1940, in this matter, being incorporated in the motion for a rehearing of the order of September 7, 1940.

When said Attorney Dazey learned on or about September 7th, 1940, that the said order of August 13, 1940, had been entered, he, as soon as he could do so, retained the only counsel he could obtain who has had extensive practice in farmer debtor proceedings, namely, Elmer Mc-

Clain, Attorney at Law, Lima, Ohio, to investigate the docket and file in said Cause in the United States District Court and in the office of said conciliation commissioner and to do whatever should be necessary to conserve and protect the rights of said farmer debtor.

16. Your petitioner attaches to this amendment to his petition for rehearing a copy of the affidavit of said Robert E. Coulson which he makes a part hereof. On September 20, 1940, your petitioner filed with Your Honor as said conciliation commissioner the original of said affidavit of said Robert E. Coulson. Said original affidavit was incorporated in your petitioner's Petition for Rehearing of the order of September 7, 1940, which Petition for Rehearing is now pending.

Henry Anton Pfister,
Farmer Debtor.

(Duly Verified.)

(Said Affidavit of J. E. Dazey referred to in the foregoing Amendment to Petition appears at R. 34 at the end of the Petition for Emergency Restraining Order which begins at R. 27.)

(Said Affidavit of Robert E. Coulson referred to in the foregoing Amendment to Petition appears at R. 94 at the end of the Petition for Rehearing of Orders of September 7, 1940, which begins at R. 88.)

And on, to wit, the 3rd day of October, A. D. 1940, came the Algonquin State Bank by its attorneys and filed in the Clerk's office of said Court its certain Motion to Strike in words and figures following, to wit:

MOTION TO STRIKE PETITION FOR REHEARING.

Filed October 3, 1940, in District Court.

Now comes the Algonquin State Bank, an Illinois banking corporation; Northern Illinois Finance Corporation, a Delaware corporation; and Hartman & Son, a co-partnership; by their respective attorneys, and enter their special appearance in the matter of the petition for rehearing of the order of August 13, 1940, for the purpose of questioning the jurisdiction of said conciliation commissioner, to entertain said petition; and as reason therefor, say:

That said order was entered by said conciliation commissioner on the 13th day of August, A. D. 1940; that a copy of said order was, prior to the entry thereof, served upon Robert E. Coulson, the only resident attorney of record of said farmer debtor in this District; that no petition for review or extension of time to review said order was filed before said conciliation commissioner or with the United States District Court within the time provided by rule of Court, by virtue whereof said conciliation commissioner has lost jurisdiction to review or reconsider said order of August 13, A. D. 1940.

Wherefore, the undersigned pray that said petition for re-hearing of the order of August 13, A. D. 1940, be dismissed for want of jurisdiction.

Dated at Elgin, Kane County, Illinois, this 1st day of October, A. D. 1940.

Algonquin State Bank,
an Illinois banking corporation.
Henry L. Cowlin,
Northern Illinois Finance Corporation,
a Delaware corporation.
Carbary & Teschke,
Hartman & Son,
a co-partnership.
Elmer C. Tobin.

And afterwards, to wit, on the 28th day of November, A. D. 1940, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter M. Givler, Referee in Bankruptcy, appears the following entry, to wit:

**ORDER OVERRULING MOTION TO DISMISS PETITION
FOR REHEARING.**

Entered November 28, 1940, by Conciliation Commissioner.

This matter coming on to be heard this 28th day of November, A. D. 1940, upon the petition for a review of the order entered in the above entitled cause on August 13, A. D. 1940, and upon the special appearances filed herein on behalf of Hartmann and Sons, a Co-partnership, Northern Illinois Finance Corporation, a Delaware Corporation, and the Algonquin State Bank, an Illinois banking corporation, asking that said petition be dismissed for the reasons therein contained, and the Court, having heard the arguments of counsel, finds that said motion should be dismissed.

It Is Therefore, Ordered, Adjudged and Decreed by the Court that the motion of the said Hartman and Sons, a Co-partnership, Northern Illinois Finance Corporation, a Delaware Corporation, and the Algonquin State Bank, an Illinois banking corporation, be and the same is hereby overruled.

And now said matter coming on further to be heard after the overruling of said motion, the said Hartman and Sons, a co-partnership, Northern Illinois Finance Corpora-

tion, a Delaware Corporation, and the Algonquin State Bank, an Illinois Corporation, elect to stand by their motion so filed.

Enter:

Walter M. Givler,
Referee.

In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Farmer Debtor. Case No. 72357.

**ORDER IN RE APPLICATION FOR REHEARING OF
ORDER OF AUGUST 13, 1940.**

This matter having come on to be heard on the 28th day of November, 1940, upon the application of the farmer debtor herein for a rehearing of the order of August 13, 1940, and the farmer debtor having been present in open Court in his own proper person and being represented by his attorney of record, and the following named creditors, Algonquin State Bank, an Illinois banking corporation, Hartman & Son, a co-partnership, Northern Illinois Finance Corporation, a Delaware corporation, E. C. Hook and Emil Geest, being present by their respective attorneys, and a full and complete hearing having been had upon said application for rehearing, the undersigned, being fully advised in the premises, Finds:

That the petition for rehearing of the order of August 13, 1940, should be denied, and that the statement of facts, discussion and conclusion as concluded by the undersigned and filed herein should be made a matter of record in said cause.

It Is Therefore Ordered, Adjudged and Decreed that the petition for rehearing of the order of August 13, 1940, be and the same is hereby denied.

It Is Further Ordered, Adjudged and Decreed that the statement of facts, discussion and conclusion on said petition for rehearing be by reference made part of this order as fully and completely as if same had been set out herein.

Entered this 28th day of November, A. D. 1940.

Walter M. Givler,
Conciliation Commissioner.

And on, to wit, the 11th day of October, A. D. 1940, came the E. C. Hook and Emil Geest by their attorneys and filed in the Conciliation Commissioner's office of said Court their certain answer in words and figures following, to wit:

**ANSWER OF E. C. HOOK AND EMIL GEEST TO THE
PETITION AND AMENDMENT FOR REHEARING
OF THE ORDER ENTERED AUGUST 13, 1940.**

Filed October 14, 1940, with Conciliation Commissioner.

Now comes E. C. Hook and Emil Geest secured creditors in the above case, by Joseph N. Sikes and John V. Mooradian, and Peden and Overholser their respective attorneys, and files this, their Answer to the Petition for Rehearing filed by said Debtor herein on September 16, 1940, and the amendment thereto filed herein on September 23, 1940, for a rehearing of the order entered herein on August 13, 1940, and say:

1. That they admit the allegations contained in Paragraphs 1, 2, 3 and 4 of said Petition for Rehearing.

2. That as to the allegations contained in Paragraph 5 of said Petition for Rehearing, they admit that Commissioner's docket shows the entries as set forth in Paragraph 5 of said Petition for Rehearing.

3. That as to the allegations contained in Paragraph 6 of said Petition for Rehearing, they say that an appraisal of all the real and personal property of said farmer debtor was duly made and approved by the Commissioner and that the exemptions of said Debtor were fully set off as provided by law, all as will more fully appear by the appraisers' report on file in said cause and by the order approving the same and by the order setting off said exemption. That as to the remaining allegations contained in said paragraph, they neither admit or deny the same, but demand strict proof thereof.

4. As to the allegations contained in Paragraph 7, they admit that the three-year period begins from April 26, 1940; that said three-year period was fixed pursuant to the petition and motion of said farmer debtor, filed herein on August 10, 1940, by said debtor, through his attorneys, Robert E. Coulson and J. E. Dazey, which petition bears the signature of said debtor and specifically states "that the end of the first year of your petitioner's moratorium will be on to-wit: the 26th day of April, A. D. 1941."

5. As to the allegations contained in Paragraph 8, they say that said order of August 13, 1940, bears the

approval of the three creditors therein set forth, but deny that said order had no other approval.

6. That they deny the allegations contained in Paragraph 9 of said Petition for Rehearing, and aver that said order, before the same was filed, was duly presented to Robert E. Coulson, attorney for said farmer debtor, said attorney approved said order as to form and, at his request, an objection to the entry of the same was noted therein.

7. That they deny the allegations contained in Paragraph 10 of said Petition for Rehearing.

8. As to the allegations in Paragraph 11 of said Petition, they aver that said farmer debtor, prior to the entry of said order on August 13, 1940, at all times had the full opportunity to present such evidence as he desired upon the subjects of said order; that he was afforded such opportunity at all times.

9. Answering the allegations contained in Paragraphs 12, 13 and 14 of said Petition, they deny that the rental so fixed and the additional payments are not pursuant to law; they deny that the period fixed for the retention of possession of the property by the farmer debtor is contrary to law; and deny that the period fixed for the said stay of proceedings is contrary to law, and aver that the period fixed is in accordance with the motion and petition of said farmer debtor, filed herein on August 10, 1940, wherein he designated the time for the commencement of such period as April 26, 1940; and they deny that said farmer debtor is entitled to any relief as prayed for in said petition and the amendment thereto.

10. Further answering said petition and amendment thereto, they say that so far as they know, said debtor was duly represented in all the proceedings herein by Robert E. Coulson and said J. E. Dazey; that at the first meeting of creditors, said debtor appeared in person and by Robert E. Coulson, his attorney, and submitted the debtor's proposal to the creditors, which was done on June 28, 1940. On July 9, 1940, said Robert E. Coulson was again present at the second meeting of the creditors and said Attorney Coulson then stated that he had no further proposal to submit to said creditors; that thereafter on July 23, 1940, the debtor's amended petition under Section 75 (s) was filed by Robert E. Coulson, debtor's attorney; that on July 25, 1940; said Robert E. Coulson moved for the appointment of the appraisers and moved that the debtor's exemption be set off to him; thereafter the appraisers were appointed by agreement of all parties and thereafter the appraisers filed their report, which was duly approved, and thereafter, the exempted property was set off to the debtor; on August 13, 1940, the debtor, through his attorney, joined the creditors in the motion asking that a reasonable rental for the personal and real property be fixed and the rental in question was then and there duly fixed as provided by law; that a copy of said order so entered on August 13, 1940, was duly submitted to said Robert E. Coulson for inspection; that he approved the same in form; that said debtor, through his attorney, has had a full and adequate notice of all the proceedings in said cause and has been duly and properly represented by his attorneys; that all proceedings were made with full notice to the

debtor and his attorneys; that the illness of J. E. Dazey was not communicated to the Commissioner, or to the creditors, until the filing of the petition herein on September 16, 1940, and that there was ample time between the date of said alleged illness, May 21, 1940, and the date of the entry of the order in question, August 13, 1940, for the farmer debtor to have employed other counsel to represent him if he deemed the same necessary; that the records show that no such action was taken and during such time, said Robert E. Coulson was present as attorney for said debtor, was advised of each and every step as matters progressed and appeared cognizant of the import and intent of every proceedings had herein, including the order of August 13, 1940.

11. That said farmer debtor, as shown by the record, was represented by two attorneys, J. E. Dazey of Findlay, Illinois, and Robert E. Coulson of Waukegan, Illinois; that J. E. Dazey is not a member of the Bar residing in this district and that said Robert E. Coulson was the only attorney of record for said farmer debtor residing in this district, and as such attorney, he had notice of all the proceedings had herein, pursuant to Rule 1, Subsection (e) of the Rules of the United States District Court for the Northern District of Illinois, Eastern Division.

12. That contrary to the allegations contained in said amendment to the petition for rehearing, said Attorney Robert E. Coulson, was admitted to practice to the State of Illinois, in 1936, and that he has been practicing for more than four years last past, and he fully understood the nature of the proceedings had herein.

13. That said debtor has not appealed from said order of August 13, 1940, within the time provided by law; that said order was entered upon full hearing, without mistake or fraud and with full notice.

13a. Answering the allegations of the amendment to said petition for rehearing, the said E. C. Hook and Emil Geest deny each and all of the material allegations therein contained and deny the allegations contained in the affidavit of said J. E. Dazey and said Robert E. Coulson attached to said amendment; and said E. C. Hook and Emil Geest further aver that they are informed and believe, and state the fact to be that the amounts fixed for the rental and principal pre-payments to be paid by said debtor in said order of August 13, 1940, were in accordance with the suggestions of said J. E. Dazey and that said order of August 13, 1940, was entered upon full notice and full hearing and in accordance with the law; as proved by said Section 75-S of said Bankruptcy Act.

13b. That the referee and Court are without jurisdiction to hear said petition for rehearing filed herein on September 16, 1940, and amendment thereto filed herein on September 23, 1940, to rehear the order entered August 13, 1940, for the reason that said petition for rehearing and the amendment thereto were not filed within the time provided by law, and were not filed within the time as required by Rule 37, and 14 of the Supreme Court and Rule 59 under the Act of Rules of Civil Procedure for the District Courts of the United States, and other rules applicable thereto and said petition and amendment thereto should be dismissed.

14. That said E. C. Hook is a secured creditor of said debtor, Henry Anton Pfister, that he secured a decree of sale of the real estate of said debtor in the Circuit Court of Lake County, Illinois, in case entitled: "E. C. Hook vs. Henry A. Pfister, and Others" Gen. No. 41356, and in and by said decree, said E. C. Hook was given a first and prior lien against the real estate of said debtor for a total sum of \$9,758.73 plus interest and that said amount due said E. C. Hook still remains unpaid and has been filed and allowed as a prior claim against the estate of said debtor.

15. That in addition to the claim of said E. C. Hook against the real estate of said debtor, said Emil Geest has a subsequent lien by virtue of a judgment rendered against said debtor in the Circuit Court of Lake County, Illinois, in the amount of \$6,030.82.

16. That in addition to said claims, the County Treasurer of Lake County, Illinois, has filed and has allowed in this proceeding a claim for general taxes against said real estate, in the amount of \$1,028.32.

Wherefore, said E. C. Hook and said Emil Geest pray that said Petition for Rehearing and the amendment thereto of the Order of August 13, 1940, be dismissed and denied, at debtor's costs.

Emil Geest,

E. C. Hook,

Creditors aforesaid.

(Duly Verified.)

And on, to wit, the 28th day of November, A. D. 1940, came the Conciliation Commissioner and filed in the

158 *Opinion and Decision on Petition and Amendment*

Clerk's office of said Court his certain ~~Opinion~~ in words and figures following, to wit:

REFEREE'S OPINION AND DECISION ON PETITION
FOR REHEARING AND AMENDMENT THERETO
OF THE ORDER OF AUGUST 13, 1940.

Entered November 28, 1940, by Conciliation Commissioner.

Statement of Facts.

The debtor filed his petition and schedules on March 1, 1940, for a composition or extension under Section 75 of the National Bankruptcy Act including sub-section 6. Debtor failed to obtain the acceptance of a majority in number and amount of all creditors whose claims were affected by said composition, and on May 1, 1940, filed an amended petition to comply with Section 75-S of the Act.

Debtor's counsel were J. E. Dazey of Findlay, Illinois, and Attorney, Robert E. Coulson of Waukegan. The latter attended all of the hearings had in the matter before the Commissioner; Mr. Dazey never appeared at any time or at any hearing.

At the first meeting of creditors (June 29, 1940) debtor was present in person, sworn and examined; he was represented by Mr. Coulson. He submitted his proposal in writing which was rejected by a majority in number and amount of all creditors whose claims were affected. His testimony at the hearing disclosed that he was selling black dirt from his farm and was ordered to refrain from so doing in the future. It was further ordered also that the proceeds from his sale of milk, eggs and poultry be impounded and held by him subject to the order of the

Commissioner. No moneys were ever turned in to the Commissioner by debtor at any time.

Because of the nature of the proposal submitted, debtor was unable to obtain the acceptance of a majority in number and amount of all creditors whose claims were affected by said composition. He therefore amended his said petition pursuant to the provisions of Section 75-S of the Act.

Appraisers were appointed to appraise the real and personal property of debtor, in accordance with the terms of the Act, and on July 31, 1940, said appraisers filed their report setting forth a list of all of all of the real and personal property and their valuation of each item.

On August 2, 1940, the Commissioner filed a report of debtor's exempted property to be set apart and retained by him.

On August 10, 1940, Debtor petitioned the court to fix the amount of rent to be paid for the use of the encumbered real and personal property. This was done.

At the hearing on August 13, 1940, a hearing was held as to the fixing of the rental value for the property of said debtor and for the payment of principal due and owing by said debtor to the secured and unsecured creditors herein as their interests may appear, as provided by the provisions 75-S of said Act; and at that time, after due hearing with reference thereto, counsel for said debtor, Robert E. Coulson, suggested then and there that the rental and principal payments be fixed between two designated amounts each year and that said rental, so fixed, was at a figure between the maximum and minimum so suggested by debtor's counsel. That said debtor was afforded and

given full opportunity at such hearing to present evidence with reference to the rental value of said property; that at no time was he prevented from presenting such evidence; that said order of August 13, 1940, was duly presented to said Robert E. Coulson, attorney for said debtor; that the period for the stay of proceedings against said farmer debtor as fixed in said order from April 26, 1940, for a period of three years is in accordance with the motion and petition of said farmer debtor filed herein on August 10, 1940, wherein he designated a time for the commencement of such period as April 26, 1940.

That said debtor did not file a petition for review of the order entered on August 13, 1940, within ten (10) days from the entry thereof, as provided by the rules of this court and by the statute.

That on September 16, 1940, said debtor for the first time filed his petition for rehearing of said order of August 13, 1940, and thereafter on September 23, 1940, filed his amendment thereto, and that the creditors, E. C. Hook and Emil Geest, upon leave of court had and obtained, duly filed their answer to said petition for rehearing and the amendment thereto on October 11, 1940, which answer was duly amended on its face on this day, after leave of court given.

That the Algonquin State Bank, an Illinois Banking Corporation, Northern Illinois Finance Corporation, a corporation, and Hartmann and Sons, a Co-partnership, duly filed herein on October 3, 1940, the motion to strike said petition for rehearing and the amendment thereto on the ground, as more fully set forth in said motion, that this court was without jurisdiction to hear such petition, for

rehearing since the same was not filed within the time provided by law.

Discussion:

The petition for rehearing of said order of August 13, 1940, in substance primarily raises the following issues, namely: That the period fixed for the retention of possession of his property by the farmer debtor is contrary to law; that said order was not presented to said farmer debtor or his counsel and was not approved by him or his counsel; that he should be permitted to present evidence to demonstrate that the sums of rental and additional payments, as provided by the order, are not pursuant to law and that he was not properly represented in this matter by his counsel.

The Record, however, shows the following:

1. The first meeting of creditors was held on June 28, 1940. Debtor's counsel, Robert E. Coulson, was present at that time. Coulson, at this hearing, submitted in writing debtor's proposal which was rejected by the creditors in the presence of Debtor, and the latter was ordered to submit a counter-proposal.

2. At the second meeting of creditors, July 9, 1940, Coulson was again present, the debtor was not. Coulson stated that the debtor had no further proposal to submit to the creditors. A motion by one of the creditors to dismiss the petition as to Sections A to R was heard and allowed, and debtor was given 15 days to file an amended petition as provided by Section S of the Act.

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3. On July 23, 1940, the debtor's amended petition under Section 75-S was filed by Robert E. Coulson, debtor's attorney.

4. On July 25, 1940, Coulson moved for the appointment of appraisers, and further moved that Debtor's exemptions be set off to him. The motion was granted and the appraisers were appointed by agreement of all parties present.

5. The appraisers filed their report on July 31, 1940, which was approved, and the Commissioner set off to debtor his exempted property as provided by the Act.

6. At the hearing of August 13, 1940, the debtor again appeared, through his counsel, Robert E. Coulson, and at that time joined the creditors asking that a reasonable rental be fixed for the real and personal property of said debtor; that at that time the debtor's counsel suggested maximum figures and minimum figures for the rental and principal payments to be made by the debtor and, after hearing had, the order as entered fixed a rental and fixed the principal payments at amounts which were substantially less than the maximum amount suggested by the debtor's own counsel; that said debtor and his counsel at that time had full opportunity to present whatever evidence they saw fit with reference to the rental value of said property. No advantage was taken of this right, nor was any attempt made to introduce any evidence whatsoever; that after the entry of said order debtor's counsel, Robert E. Coulson, was presented with said order before the entry of the same; that he had full knowledge of the terms and provisions thereof prior to the signing of said

order and also received such knowledge from the presentation of said order to him, and that notwithstanding such knowledge, said debtor, or his counsel, did not file a petition for a review of such order within the time as required by law.

Any court must necessarily require that the business of its office be conducted through attorneys, so that an orderly procedure may be followed. An examination of the various hearings on this cause indicates clearly that at all times and at all hearings, the debtor was adequately and fully represented. Debtor at all times had full and ample opportunity to present his evidence or any defense he might desire, but for reasons best known to himself and his counsel, he did not do so.

Of all the various hearings held in this cause, debtor only attended two. The Commissioner on numerous occasions requested the presence of the debtor and J. E. Dazey so that more might be accomplished at each hearing.

If the debtor feels that he has not been properly or adequately represented, it is not because of the number or ability of his counsel. It is conceivable that debtor might feel the same way about any counsel he might subsequently engage, and might against petition for a rehearing on that ground. Certainly no purpose would be served by again trying the case with new or different counsel.

Much is made in the rehearing petition of the illness of J. E. Dazey. This condition of Dazey's health was first called to the Commissioner's attention by this petition. At no time during the proceedings was a continuance or extension of time requested because of it. It

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appears from the petition alone that Mr. Dazey suffered a stroke of apoplexy on May 21, 1940, or more than a month before the first meeting of creditors. If he did not feel able to carry on his work, he had an abundance of time to engage other counsel.

That said petition for rehearing charges that the period fixed for the stay of proceedings is contrary to law. The time fixed in the order is in pursuance to the motion and petition of said farmer debtor filed herein on August 10, 1940, wherein were designated the time for the commencement of such period as April 26, 1940.

Conclusion.

Under the facts and circumstances surrounding this case, it is the opinion and the order of the undersigned Referee that there is no equity or merit in the petition for rehearing of said debtor and that the same should be denied; and it is therefor the order of the undersigned that said petition for rehearing of said debtor filed herein on September 16, 1940, and the amendment thereto filed on September 23, 1940, for rehearing of the order entered herein on August 13, 1940, be and the same is hereby denied.

Enter:

Walter M. Givler,
Referee,

And on, to wit, the 28th day of November, A. D. 1940, came the Debtor by his attorneys and filed in the Clerk's office of said Court his certain Petition in words and figures following, to wit:

PETITION FOR REVIEW OF ORDER DATED AUGUST
13, 1940, WHICH BECAME FINAL NOVEMBER
28, 1940.

Filed November 28, 1940, with Conciliation Commissioner.

Your petitioner, Henry Anton Pfister, is the farmer debtor herein and as such was a party to the following certain farmer debtor proceedings pending before Honorable Walter M. Givler as the conciliation commissioner in charge thereof, namely:

Proceedings ordering payments of rental, certain additional payments, possession in said farmer debtor, and stay of proceedings.

Upon the hearing thereof a certain final order was made by the said conciliation commissioner as follows:

"In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Debtor and Bankrupt. No. 72557.

Order.

This cause coming on to be heard on the amended petition of said debtor filed under the provisions of section 75 of the Bankruptcy Act and on the motion of the creditors, E. C. Hook, Algonquin State Bank, and Northern Illinois Finance Company, for the fixing of a reasonable rental value for the property of said debtor, Henry Anton Pfister, and for the payment of principal due and owing by said debtor to the secured and unsecured creditors herein as their interest may appear, as provided by the provisions of section 75 (s) of said Act; and it appearing

to the court and the court now finds that said debtor has filed an amended petition herein for relief under said section 75 (s) and said debtor has been duly adjudged a bankrupt under said section 75 (s) and that the value of the debtor's property has been fixed by an appraisal heretofore had, which appraisal has been approved, all as provided by said section 75 (s); and that heretofore the court has duly set aside for the benefit of said debtor his exemptions as provided by said Act and the court now having considered said amended petition and said motion of said creditors and having heard evidence with reference to the usual, customary rental in the community where said property is located, based upon the rental value, net income and earning capacity of the property, and having considered evidence with reference to the protection of the rights of the creditors and the debtor's ability to pay with a view to his financial rehabilitation, and having heard arguments of counsel and having considered the suggestion of the debtor's counsel that it would be an aid to the rehabilitation of the debtor if payments required be reduced for the first year, increased in the second year, with a further increase for the third year, so that the total payments made will equal the sum determined by this Court as a fair annual amount to be paid, and now being fully advised in the premises, finds that the motion of said creditors for the fixing of said rental and for the payment of principal payments upon the amount due the creditors should be granted and the Court now finds that the reasonable rental for said property based upon the usual and customary rental in the community where the property is located, based upon the

rental value, net income and earning capacity of the property, would be the sum of \$2,125.00 per year; that it will assist the debtor to pay the sum of \$1,625.00, divided in semi-annual payments the first year, \$2,125 divided into semi-annual payments the second year and \$2,625.00 divided into semi-annual payments the third year, so that the total rental for the three-year period shall be paid in an amount equivalent to \$2,125.00 per year.

It Is, Therefore, Ordered that the possession of all of the real and personal property of said debtor, as set forth in the appraisal filed herein on July 31, 1940 (except that portion thereof designated and set apart as exempted property of said debtor as provided in the order this day entered approving the appraisers report and setting aside said exemptions), shall remain in the debtor under the supervision and control of the Court, subject to all existing mortgages, liens, pledges or encumbrances, and all such existing mortgages, liens, pledges or encumbrances shall remain in full force and effect and the property covered by such mortgages, liens, pledges or encumbrances shall be subject to the payment of the secured creditors as their interests shall appear.

It Is Further Ordered that such debtor shall be permitted to retain possession of such property during a period of 3 years from April 26, 1940, under the supervision and control of this Court, provided that said debtor pay into this court rental for such property \$2,125.00 per year (which sum is hereby fixed as a reasonable rental) in semi-annual installments as follows:

October 26, 1940	\$ 812.50
April 26, 1941	812.50
October 26, 1941	1062.50
April 26, 1942	1062.50
October 26, 1942	1312.50
April 26, 1943	1312.50

Said rental shall be used first, for the payment of taxes and upkeep of said debtor's property, and the remainder shall be distributed among the secured and unsecured creditors of the debtor and applied on their claims as may hereafter be ordered by the court; and said debtor be and he is hereby ordered to pay said rental as above set forth. Said debtor be and he is further ordered to pay quarterly in addition to the rental above mentioned on the principal due and owing by said debtor to the secured and unsecured creditors, as filed herein, as their interests may appear, the following sums:

July 26, 1940	\$406.25
.(which time of payment is extended to August 28, 1940.)	
October 26, 1940	406.25
January 26, 1941	406.25
April 26, 1941	406.25
July 26, 1941	531.25
October 26, 1941	531.25
January 26, 1942	531.25
April 26, 1942	531.25
July 26, 1942	656.25
October 26, 1942	656.25
January 26, 1943	656.25
April 26, 1943	656.25

which principal payments, so required as aforesaid, the Court now finds is consistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation: The Court

hereby reserves to itself the right to order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor and to make such other and further orders as may be proper under section 75 of the Bankruptcy Act.

It Is Further Ordered that all judicial or official proceedings in any court or under the direction of any official against the debtor or any of his property be, and the same are hereby stayed for a period of three years from April 26, 1940, or until the further order of this court and if, however, the debtor at any time fails to comply with the provisions of said Section 75 of said Act, or with the orders of this court for the payment of rental and for the payment of principal due and owing, as above ordered, made pursuant to said section, or is unable to refinance himself within three years, this court shall order the appointment of a trustee and order the property sold or otherwise disposed of, as provided for in said Act; to the entry of which order the said debtor hereby objects, which objections, having been heard, are now hereby overruled.

Enter this 13th day of August, A. D. 1940.

Walter M. Givler,
Referee.

ok.

Northern Ill. Finance Co.
by Geo. D. Carbary
Their atty.

ok. Algonquin State Bank by
Henry C. Cowlin, atty.

ok. E. C. Hook by J. N. Sikes,
Atty."

Your petitioner duly filed his petition and amendments thereto seeking a rehearing of said final order to which said petition as so amended certain creditors filed their various pleadings. Said application for rehearing and the pleadings thereto were heard by said conciliation commissioner on November 28, 1940, and on November 28, 1940, said conciliation commissioner issued and entered his order and decision thereon denying said application for rehearing. Whereby said order of August 13, 1940, became final on November 28, 1940. Said order of November 28, 1940, is attached and made a part of this Petition for Review.

Said order is erroneous in the following respects, namely:

1. Said farmer debtor being a farmer and not familiar in any respect with legal procedure or substantive law pertaining to said proceedings and matters he was without legal representation as a result of the sudden and unforeseen serious illness and incapacity of his sole counsel who was retained by him, namely J. E. Dazey, an attorney at law, and who before and during the pendency of said matters suffered an attack of apoplexy with high blood pressure of 232 which remained at 192 on September 18, 1940. Without the authorization of said farmer debtor certain statements were claimed to have been made by one Robert E. Coulson who was instructed by said Attorney Dazey only to file papers. By said unfortunate and unforeseen circumstances said farmer debtor has not had due process of law in said proceedings.

2. Said farmer debtor has been unable to present either evidence of facts or legal authorities or arguments in said matters whereby he could maintain his rights under Section 75 of the Bankruptcy Act under which said proceedings were and are pending.

3. Said order is contrary to law and to the evidence and the letter and spirit of Section 75 of the Bankruptcy Act.

4. Said order further erred in ordering a total rental payment of \$6,375.00 within 3 years which were ordered to be paid in semi-annual installments.

5. Said order further erred in requiring additional payments of \$6,375.00 within 3 years to be made in quarterly installments, making a total of \$12,750.00 to be paid out of the proceeds of the farm of said farmer debtor within 3 years, being an average total payment of \$4,250.00 for each year, in quarterly and semi-annual installments.

6. Said order further erred in making the three year stay start from April 26, 1940.

7. Said order further erred in ordering possession to remain in said farmer debtor for a period of three years beginning April 26, 1940.

8. Said order is erroneous in that no evidence was taken upon the subject of said payments totalling \$12,750.00, to be made within three years in quarterly and semi-annual installments.

9. Said order is erroneous in that evidence was not taken upon the various items thereof.

Wherefore, petitioner prays that said order be reviewed and reversed and for such order as may be just

and right and that he be restored to all things he has lost by reason of said errors.

(Duly verified.)

And on, to wit, the 30th day of November, A. D. 1940, came the Conciliation Commissioner and filed in the Clerk's office of said Court his certain Certificate in words and figures following, to wit:

CERTIFICATE OF CONCILIATION COMMISSIONER
ON PETITION TO REVIEW ORDER OF
AUGUST 13, 1940.

Filed November 30 in District Court.

Now comes Walter M. Givler, Referee in the above matter, and certifies to the Judges of said Court the following:

That on November 28, 1940, said farmer debtor, Henry Anton Pfister, filed with the undersigned his petition for review for the purpose of reviewing the order of the undersigned entered on November 28, 1940, denying said debtor's petition for rehearing filed for the purpose of rehearing the order entered on August 13, 1940.

The undersigned, for the purposes of this review, submits herewith the following documents and orders:

- (1) Petition for review of said farmer debtor wherein is set forth the debtor's points and questions raised
- (2) Petition for rehearing filed September 16, 1940.
- (3) Amendment to petition for rehearing filed September 23, 1940.

(4) Answer of E. C. Hook and Emil Geest, creditors, to said petition for rehearing and amendment thereto filed October 11, 1940.

(5) Motion to strike said petition for rehearing by creditors, Algonquin State Bank et al.

(6) Order denying motion to strike.

(7) Opinion and order denying petition for rehearing entered November 28, 1940.

Respectfully submitted,

Walter M. Givler,
Referee as aforesaid.

And afterwards, to wit, on the 16th day of December, A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

ORDER OF DISTRICT COURT IN RE PETITION FOR
REVIEW OF ORDER OF AUGUST 13, 1940.

Filed December 16, 1940, in District Court.

This matter coming on to be heard on the petition for review of the order entered by Walter M. Givler, Referee in this cause, on August 13, 1940, on the motion of creditors, E. C. Hook, Algonquin State Bank, an Illinois banking corporation, and Northern Illinois Finance Company, a Delaware corporation, providing for payments of rental and principal payments, possession in the farmer debtor and bankrupt herein, and stay of proceedings, pursuant to the provisions of Section 75-S of the Bankruptcy

Act, which petition for review was filed with said Referee on November 30, 1940, and the Court, having examined the records and proceedings certified to this Court by said Walter M. Givler, Referee herein, and having heard arguments of counsel and being fully advised in the premises, now finds:

. That said order of August 13, 1940, was duly entered by said Referee in this cause on said date; that no petition for review of or appeal from said order was filed or taken within the time and period of limitation, as provided by Section 39C of the Bankruptcy Act and Rule 14 of this Court; that after the expiration of such time and period of limitation for filing a petition for review and taking an appeal from said order, said farmer debtor and bankrupt herein filed with said Referee on September 16, 1940, his petition for a rehearing of said order so entered on August 13, 1940, and thereafter, on September 23, 1940, filed with said Referee his amendment to his petition for rehearing of said order of August 13, 1940; that said petition for rehearing and the amendment thereto was denied by said Referee in the matter of said cause on November 28, 1940; that thereafter, on November 30, 1940, said farmer debtor and bankrupt herein filed with said Referee for the first time a petition for review of said order entered on August 13, 1940.

That said petition for rehearing of said order of August 13, 1940, was filed after the expiration of the time or period of limitation allowed by the rules of court and statute in such case made and provided for the filing of a petition for review of said order, and said petition for re-

hearing having been denied no appeal lies therefrom and the filing and the denial of said petition for rehearing did not extend the time for filing a petition for review or the taking of an appeal from said order of August 13, 1940, and this Court is without jurisdiction to hear and review the matters set forth in said petition for review, so filed herein on November 30, 1940, and the same should be dismissed.

It Is, Therefore, Ordered, Adjudged and Decreed that said petition for review of said order so entered on August 13, 1940, providing for payment of rental and principal payments, possession in said farmer debtor and stay of proceedings herein, be and the same is hereby dismissed.

It Is Further Ordered, Adjudged and Decreed that said Referee, Walter M. Givler, be and he is hereby directed to proceed and carry into effect said order so entered on August 13, 1940.

Entered at Chicago, Cook County, Illinois, this 16th day of December, A. D. 1940.

Wm. H. Holly,
Judge.

And afterwards, to wit, on the 16th day of December, A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

ORDER OF DISTRICT COURT RE PETITION FOR
REVIEW OF ORDER OF SEPTEMBER 7, 1940,
AND SEPTEMBER 30, 1940.

Filed December 16, 1940, in District Court.

This matter coming on to be heard on the petition for review of the three orders entered by Walter M. Givler, Referee in this cause, on September 7, A. D. 1940, on the petitions of Algonquin State Bank, an Illinois banking corporation, Northern Illinois Finance Corporation, a Delaware corporation, and Hartman & Son, a co-partnership, creditors of the debtor and bankrupt herein, providing for the sale of personal property of said debtor and bankrupt herein, described in said orders, which petition for review was filed with said Referee on October 9, 1940, and the Court, having examined the records and proceedings certified to this Court by said Walter M. Givler, Referee herein, and having heard arguments of counsel and being fully advised in the premises, now finds:

That said three orders of September 7, A. D. 1940, were duly entered by said Referee in this cause on said date; that no petition for review of or appeal from said orders or either of them was filed or taken within the time and period of limitation as provided by the rules of Court and the statute in such case made and provided; that after the expiration of such time and period of limitation for filing a petition for review and taking an appeal from said orders, said farmer debtor and bankrupt herein filed with said Referee on September 20, A. D. 1940, in said cause, his petition for a re-hearing of said orders, so entered on September 7, A. D. 1940; that said petition for

rehearing was denied by said Referee in the matter of said cause on September 30, A. D. 1940; that thereafter on October 9, A. D. 1940, said farmer debtor and bankrupt herein filed with said Referee for the first time a petition for review of said three orders entered on September 7, A. D. 1940, and the order denying said petition for rehearing entered on September 30, A. D. 1940; that said petition for rehearing of said orders of September 7, A. D. 1940, was filed after the expiration of the time or period of limitation allowed by the rules of Court and the statute in such case made and provided, and said petition for rehearing having been denied, no appeal lies therefrom; and the filing and denial of said petition for rehearing did not extend the time for filing a petition for review or an appeal of said orders of September 7, A. D. 1940, and this Court is without jurisdiction to hear and review the matters set forth in said petition for review so filed herein on October 9, A. D. 1940, and the same should be dismissed.

It Is Therefore Ordered, Adjudged and Decreed by the Court that said petition ~~for~~ review of said three orders so entered on September 7, A. D. 1940, for the sale of the personal property as therein set forth, entered upon the petitions of said creditors above mentioned be and the same is hereby dismissed.

It Is Further Ordered, Adjudged and Decreed that said petition for review of the order entered on September 30, A. D. 1940, entered by said Referee, denying the petition for rehearing filed by said farmer debtor as above mentioned be and the same is hereby likewise dismissed.

It Is Further Ordered, Adjudged and Decreed that said Referee Walter M. Givler be and he is hereby directed to proceed and carry into effect said orders so entered on September 7, A. D. 1940.

Entered at Chicago, Cook County, Illinois, this 16th day of December, A. D. 1940.

Wm. H. Holly,
Judge.

And on, to wit, the 30th day of December, A. D. 1940, came the Debtor by his attorneys and filed in the Clerk's office of said Court his certain Motion in words and figures following, to wit:

Please Take Notice that on Monday, December 30, 1940, at the opening of Court or as soon thereafter as counsel can be heard, we shall appear before the Honorable William H. Holly, in the courtroom usually occupied by him, Federal Building, Chicago, Illinois, and shall move the Court to vacate the orders heretofore entered on December 16, 1940, dismissing the Petitions of Review of Farmer-Debtor from orders entered by the Referee, Walter M. Givler, Esq., in the above cause on August 13, 1940, and September 30, 1940, and to reconsider said Petitions for Review, and for grounds thereof will present and cite to the Court the cases of Bowman vs. Loperno, 85 L. Ed. 139, and Wright vs. Union Cent. Life Ins. Co., 85 L. Ed. 166, both decisions rendered by the United States Supreme Court, October Term, 1940, and published in the Reports since the entry of the orders herein on December 16, 1940, in support of our motion; at which time and place you may appear if you so see fit.

Culver & Mendelson,

Attorneys for Farmer-
Debtor.

Memorandum Denying Motion to Vacate 179
Notice of Appeal

And afterwards, to wit, on the 14th day of January, A. D. 1940, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

**MEMORANDUM OF DISTRICT COURT DENYING
MOTION TO VACATE ORDERS OF
DECEMBER 16, 1940.**

Entered January 14, 1941, in District Court.

I have re-examined the opinion of the Supreme Court in Bowman, petitioner, vs. Laperena et al., decided December 9, 1940, and am of the opinion that the order heretofore entered by me should stand. The motion to vacate said order will therefore be denied. An order accordingly has this day been entered.

Wm. H. Holly,
Judge.

Dated January 14, 1941.

And on, to wit, the 14th day of January, A. D. 1941, came the Debtor Appellant by his attorneys and filed in the Clerk's office of said Court his certain Notices of Appeal in words and figures following, to wit:

**NOTICE OF APPEAL RELATING TO ORDERS OF
SEPTEMBER 7, 1940.**

Filed January 14, 1941, in District Court.

Notice is hereby given that Henry Anton Pfister, the Farmer-Debtor above named, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the order and final judgment entered in this action

on December 16, 1940, which dismissed the petition of said Henry Anton Pfister to review the three orders of conciliation commissioner, Walter M. Givler, which orders were entered September 7, 1940, and which said orders became final September 30, 1940, and the motion of Farmer-Debtor of December 30, 1940, to vacate said order of December 16, 1940, and to re-consider said Petition for Review was denied on January 14, 1941.

(Bond on Appeal executed by Henry Anton Pfister as principal and United States Fidelity and Guaranty as surety is omitted.)

**NOTICE OF APPEAL RELATING TO ORDER OF
AUGUST 13, 1940.**

Filed January 14, 1941, in District Court.

Notice is hereby given that Henry Anton Pfister, the farmer debtor above named, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the order and final judgment entered in this action on December 16, 1940, which dismissed the petition of said Henry Anton Pfister to review the order of conciliation commissioner Walter M. Givler entered August 13, 1940, which order of said conciliation commissioner became final November 28, 1940, and the motion of Farmer-Debtor of December 30, 1940, to vacate said order of December 16, 1940, and to re-consider said Petition for Review was denied on January 14, 1941.

(Bond on Appeal executed by Henry Anton Pfister and United States Fidelity and Guaranty Company is omitted.)

*Cost Bonds on Appeal
Order Consolidating Appeals*

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And afterwards, to wit, on the 20th day of January, A. D. 1941, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

**TWO COST BONDS ON APPEAL FILED JANUARY
14th A. D. 1941, AS FOLLOWS:**

Henry Anton Pfister, Farmer Debtor. No. 72557.

Know All Men by These Presents: That we, Henry Anton Pfister, as principal, and United States Fidelity & Guaranty Company, as Sureties * * *

Henry Anton Pfister, Farmer Debtor. No. 72557.

Know All Men by These Presents: That we, Henry Anton Pfister, As Principal and United States Fidelity and Guaranty Company, as sureties * * *

And afterwards, to wit, on the 20th day of January, A. D. 1941, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit:

ORDER CONSOLIDATING APPEALS.

Entered January 20, 1941, in District Court.

Upon application by the appellant and for good cause shown the appeals taken on January 14, 1941, from the orders of this court entered on December 16, 1940, are consolidated.

Wm. H. Holly,
Judge.

And on, to wit, the 12th day of February, A. D. 1941, came the Appellees by their attorneys and filed in the Clerk's office of said Court their certain Designation in words and figures following, to wit:

DESIGNATION OF CONTENTS OF RECORD ON
APPEAL AND STATEMENT OF POINTS.

Filed February 3, 1941, in District Court.

To: Northern Illinois Finance Corporation, Algonquin State Bank, Hartman and Son, E. C. Hook, and Emil Geest:

The appellant designates the following portions of the record and proceedings to be contained in the record on appeal of the above causes which have been consolidated by order of the District Court for the purposes of appeal:

1.—Title page.

2.—Caption.

3.—All entries on clerk's Bankruptcy Docket in Chicago office.

4.—All entries on docket of conciliation commissioner in Waukegan.

Note to the Clerk: In compliance with the Rules of Civil Procedure, with the Rules of the Circuit Court of Appeals for the Seventh Circuit, and with the Rules of the Supreme Court, in all documents the captions and verifications, proofs of service and notices of hearing are to be omitted except where otherwise designated herein. In place of captions and verifications and other omitted matter the words (Caption) and (Duly verified) or other

suitable words shall be substituted at proper places. In place of such duplications proper cross references are to be inserted. All duplications such as documents, descriptions of property, etc., are to be omitted and proper cross references made.

5.—Petition under Section 75 (a) to (r) for composition or extension filed February 28, 1940, and the portions of schedules designated below, omitting signatures, and omitting all printed parts except as stated:

6.—Schedule A-1: b (1), (2), (3); c (1), (2), and total; Schedule A-2 and total; Schedule A-3 and total; Schedule A-4; Schedule A-5; Schedule B-1; Schedule B-2, A, B, C, D, E, F, G, H, I, J, K, L, and total; Schedule B-3, A, B, C, D; Schedule B-4 total none; Schedule B-5: Include that portion of printed form reading: Property claimed to be exempt by state laws with reference to the statute creating the exemption and include the typed statements; Schedule B-6; Summary of debts and assets in full as printed and typed.

7.—Order of general reference to Conciliation Commissioner Kirby by Judge Holly, entered February 29, 1940.

8.—Petition under Section 75 (s) filed July 19, 1940.

9.—Order of Adjudication on Amended Petition, entered July 20, 1940.

10.—Petition for emergency restraining order, filed September 17, 1940.

11.—Affidavit of J. E. Dazey filed September 19, 1940.

12.—Answer to petition for emergency restraining order filed September 19, 1940.

13.—Memorandum of Judge Holly dated September 19, 1940, initialed WHH and numbered 162 denying petition to restrain sale.

14.—Petition of Hartman and Son to conciliation commissioner to reclaim certain cattle, filed with conciliation commissioner August 7, 1940.

15. Petition of Algonquin State Bank to conciliation commissioner to turn over certain cattle, etc., filed with conciliation commissioner August 7, 1940.

16. Petition of Northern Illinois Finance Corporation to conciliation commissioner to turn over certain cattle filed with conciliation commissioner August 10, 1940.

17. Petition of farmer debtor for an order fixing amount of rental filed with conciliation commissioner on August 10, 1940.

18. Appraisement of real estate and personal property filed with conciliation commissioner on July 31, 1940, and approved by conciliation commissioner on August 13, 1940.

19. Order of conciliation commissioner fixing rental and ordering additional payments entered by conciliation commissioner on August 13, 1940.

20. Order bearing file mark of referee dated September 7, 1940, re petition of Hartman and Son.

21. Order bearing file mark of referee dated September 7, 1940, re petition of Algonquin State Bank.

22. Order bearing file mark of referee dated September 7, 1940, re petition of Northern Illinois Finance Corporation.

23. Petition to conciliation commissioner for rehearing of orders of September 7, 1940, filed September 20, 1940.

24. Amendment to petition for rehearing of the orders of September 7, 1940, filed September 23, 1940.

25. Answer to petition for rehearing of orders of September 7, 1940, filed September 26, 1940.

26. Reply of farmer Debtor to "Answer to Petition for Rehearing of orders of September 7, 1940," etc., filed September 26, 1940.

27. "Referee's Opinion and Decision on Petition for Rehearing of Orders of September 7, 1940," marked filed by Referee on September 30, 1940.

28. Petition for Review of three orders dated September 7, 1940, bearing file mark of referee dated October 9, 1940.

29. Certificate on review signed by Walter M. Givler, Referee, filed October 15, 1940.

30. Special appearance and motion of Algonquin State Bank, Northern Illinois Finance Corporation and Hartman and Son filed October 17, 1940.

31. Answer of Algonquin State Bank, Northern Illinois Finance Corporation and Hartman and Son, to the Petition for Review of Orders of September 7, 1940, filed October 17, 1940.

32. Petition to conciliation commissioner for rehearing of order of August 13, 1940, fixing rent and extra payments, marked filed by Referee September 16, 1940.

33. Amendment to Petition for Rehearing of the Order of August 13, 1940, marked filed by referee September 23, 1940.

34. Motion of Algonquin State Bank, Northern Illinois Finance Corporation and Hartman and Son to dismiss petition for rehearing of order of August 13, 1940, for want of jurisdiction, marked filed by referee October 3, 1940.

35. Order overruling motion of Algonquin State Bank, Northern Illinois Finance Corporation and Hartman and Son to dismiss petition for rehearing of order of August 13, 1940, marked filed by referee November 22, 1940.

36. Answer of E. C. Hook and Emil Geest to petition for rehearing of order of August 13, 1940, marked filed by referee October 11, 1940.

37. "Referee's Opinion and Decision on Petition for Rehearing and Amendment thereto of the order of August 13, 1940," marked filed by referee November 28, 1940.

38. Petition for review of order dated August 13, 1940, bearing mark filed by Referee November 28, 1940.

39. Certificate on review signed by Walter M. Givler, Referee, filed November 28, 1940.

40. Order of District Court entered December 16, 1940, dismissing petition for review of order of conciliation commissioner entered August 13, 1940, for rental and other payments.

41. Order of District Court entered December 16, 1940, dismissing petition for review of three orders of conciliation commissioner entered September 7, 1940, for sale of certain chattels.

42. Motion to vacate orders of December 16, 1940, and to rehear petitions for review of conciliation commissioner's orders, filed December 30, 1940 (Omit caption, parties to whom notice was addressed and proof of service).

43. Memorandum and order of Judge Holly dated and entered January 14, 1941, denying motion to vacate orders of December 16, 1940.

44. Notices of appeal from orders of December 16, 1940, dismissing petition to review conciliation commissioner's order of August 13, 1940, and dismissing petition to review conciliation commissioner's orders of September 7, 1940, said notices having been filed January 14, 1941.

45. Bonds on appeal filed January 14, 1941. Include only a statement naming the principal and the surety on each bond.

46. Order consolidating appeals entered January 20, 1941.

47. Designation of Contents of Record on Appeal including caption.

48. Statement of Points.

49. Certificate of Clerk.

Note: A Concise Statement of the Points on which the appellant intends to rely on appeal is appended to this designation.

CONCISE STATEMENT OF THE POINTS ON WHICH
THE APPELLANT INTENDS TO RELY
ON APPEAL.

1. The District Court erred in dismissing the petition to review the order of the conciliation commissioner entered by the conciliation commissioner on August 13, 1940, which became final on November 28, 1940.

2. The District Court erred in dismissing the petition to review the three orders of the conciliation commissioner entered by the conciliation commissioner on September 7, 1940, which three orders became final on September 30, 1940.

3. The District Court erred in denying the motion of the appellant to vacate its order of December 16, 1940, dismissing the petition to review the order of the conciliation commissioner entered by the conciliation commissioner on August 13, 1940, which order of the conciliation commissioner became final on November 28, 1940.

4. The District Court erred in denying the motion of the appellant to vacate its order of December 16, 1940, dismissing the petition to review the three orders of the conciliation commissioner entered by the conciliation commissioner on September 7, 1940, which three orders of the conciliation commissioner became final on September 30, 1940.

5. The District Court erred in refusing to hold that the considering and entertaining by the conciliation commissioner of the petition to the conciliation commissioner for rehearing of the conciliation commissioner's order en-

tered August 13, 1940, destroyed the finality of said order of August 13, 1940, for the purpose of seeking a review thereof, so that said order became final on November 28, 1940, for the purpose of review.

6. The District Court erred in refusing to hold that the considering and entertaining by the conciliation commissioner of the petition to the conciliation commissioner for rehearing of the conciliation commissioner's three orders entered September 7, 1940, destroyed the finality of said three orders of September 7, 1940, for the purpose of seeking a review thereof, so that said three orders became final on September 30, 1940, for the purpose of review.

7. The District Court erred in refusing to consider the rule upon the petition to review the order of the conciliation commissioner entered by the conciliation commissioner on August 13, 1940, which became final on November 28, 1940.

8. The District Court erred in refusing to consider the rule upon the petition to review the three orders of the conciliation commissioner entered by the conciliation commissioner on September 7, 1940, which three orders became final on September 30, 1940.

9. The District Court erred in holding that the period allowed for seeking review of a conciliation commissioner's order in the farmer debtor proceedings limits the time within which application to said conciliation commissioner may be made for a rehearing and a reconsideration thereof.

10. The District Court erred in holding that a conciliation commissioner in farmer debtor proceedings may

not consider or entertain an application for reconsideration and rehearing of an order if said application be made more than ten days after the entry of said order.

11. The District Court erred in refusing to hold that a conciliation commissioner in former debtor proceedings may consider and entertain an application to reconsider an order in an instance where such application is made more than ten days after the entry of such order.

12. The District Court erred in refusing to rule that the conciliation commissioner's order of August 13, 1940, became final for the purpose of review on November 28, 1940, by virtue of the application for rehearing of said order being considered and entertained by the conciliation commissioner, and by virtue of the conciliation commissioner's denial of the application of the objecting creditors (the appellees herein) to dismiss said application for rehearing without considering and entertaining said application for rehearing on the alleged ground that the conciliation commissioner had no jurisdiction or power to consider or entertain the said application for rehearing.

13. The District Court erred in refusing to rule that the conciliation commissioner's three orders of September 7, 1940, became final for the purpose of review on September 30, 1940, by virtue of the application for rehearing of said three orders being considered and entertained by the conciliation commissioner, and by virtue of the conciliation commissioner's denial of the application of the objecting creditors (the appellees here) to dismiss said application for rehearing without considering and entertaining said application for rehearing on the alleged ground

that the conciliation commissioner had no jurisdiction or power to consider or enter the said application for rehearing.

And on, to wit, the 12th day of February, A. D. 1941, came the Appellees by their attorneys and filed in the Clerk's office of said Court their certain Further Designation in words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division. - Henry Anton Pfister, Farmer Debtor, vs. Northern Illinois Finance Corporation, Algonquin State Bank and Hartman and Son, Henry Anton Pfister, Farmer Debtor, vs. Algonquin State Bank, Northern Illinois Finance Corporation, Hartman and Son, E. C. Hook and Emil Geest. Case Number 72557. Farmer Debtor Proceedings.

**FURTHER DESIGNATION OF CONTENTS OF
RECORD ON APPEAL.**

To: Henry Anton Pfister, Farmer Debtor, and Culver and Mendelson and Elmer McClain, his attorneys.

The Appellees, Algonquin State Bank, Northern Illinois Finance Corporation and Hartman and Son designate the following additional portions of the record and proceedings to be contained in the record on appeal of the above causes which have been consolidated by order of the District Court for the purposes of appeal.

1. Amended answer to amendment by interlineation of petition and amendment to petition for rehearing of orders of September 7th, 1940.

2. Counter-Affidavit to affidavit of U. G. Ward filed in reply to answer of Algonquin State Bank, Hartman and

Son and Northern Illinois Finance Corporation, a Delaware Corporation, which reply was filed as of September 26th, 1940.

Algonquin State Bank,

By Henry L. Cowlin,

Its Attorney

Northern Illinois Finance Corporation,

By Geo. D. Carbary,

Almore A. Teschke,

Its Attorneys.

Hartman and Son

By Emil C. Tobin,

Their Attorney.

And on, to wit, the 14th day of October, A. D. 1940, came the Algonquin State Bank et. al., by their attorneys and filed in the Clerk's office of said Court their certain Amended Answer to Amendment by Interlineation of Petition, etc., in words and figures following, to wit:

AMENDED ANSWER TO AMENDMENT BY INTER-
LINEATION OF PETITION AND AMENDMENT
TO PETITION FOR REHEARING OF
ORDERS OF SEPTEMBER 7, 1940.

Now come the Algonquin State Bank, by Henry L. Cowlin, its attorney, Hartman and Son, by Elmer C. Tobin, their attorney, and Northern Illinois Finance Corporation, a Delaware corporation, by Geo. D. Carbary and Almore H. Teschke, its attorneys; and as to the amendment by interlineation of the petition and amendment to the petition for rehearing of the orders of September 7, 1940, respectfully say:

1. That as to the amendment of Paragraph 4 on Page 3 of said petition, that they deny each and every allega-

tion thereof and say that said farmer debtor was present in person, together with his attorney of record, Robert E. Coulson, and also U. G. Ward, an attorney from Shelbyville, Illinois, on said 7th day of September, 1940, and entered into a discussion with the undersigned creditors concerning the entry of said orders of September 7, 1940, and saw and witnessed the signing by the Honorable Walter M. Givler of said orders of September 7, 1940, and fully knew the contents and conditions thereof, as will all more fully appear by the records of the said Referee and by reference to the opinion and decision of the Referee as filed under the orders of September 30, 1940, and that the statement of said farmer debtor to the contrary in said amended petition by interlineation is a falsehood.

Algonquin State Bank
Hartman and Son

Northern Illinois Finance Corporation,
a Delaware Corporation,

And on, to wit, the 14th day of October, A. D. 1940, came Almore H. Teschke and filed in the Clerk's office of said Court his certain Counter-Affidavit of U. G. Ward, in words and figures following, to wit:

COUNTER-AFFIDAVIT TO AFFIDAVIT OF U. G. WARD
FILED IN REPLY, WHICH REPLY WAS FILED
AS OF SEPTEMBER 26, 1940.

Almore H. Teschke, being first duly sworn on oath, deposes and says that he is one of the attorneys for the Northern Illinois Finance Corporation, a Delaware corporation, and that he was present at the hearing of September 7, 1940, before the Honorable Walter M. Givler, the Conciliation Commissioner of the above entitled mat-

ter, in the City of Waukegan, Lake County, Illinois; that at said hearing one U. G. Ward, an attorney from Shelbyville, Illinois, was present, together with Robert E. Coulson, as counsel for the farmer debtor, Henry Anton Pfister; that at said hearing a discussion was entered into by and between the said farmer debtor, Robert E. Coulson U. G. Ward and the Conciliation Commissioner and attorneys for the Algonquin State Bank, Hartman and Son and Northern Illinois Finance Corporation, a Delaware corporation, concerning the entry of the orders heretofore referred to as having been entered September 7, 1940; that said U. G. Ward was present at all times during the discussion concerning said orders of September 7, 1940, and was likewise present at the time that the Honorable Walter M. Givler affixed his signature to each of the three orders entered on September 7, 1940, and that he, the said U. G. Ward, was advised by the Honorable Walter M. Givler, that he was entering the orders of September 7, 1940, and further advised the said U. G. Ward that he was signing and filing the said orders and that the said orders were signed in the immediate presence of the farmer debtor, the said Robert E. Coulson and the said U. G. Ward.

Further this affiant saith not.

Almore H. Teschke.

(Duly Verified.)

In the District Court of the United States for the Northern District of Illinois, Eastern Division. In the Matter of Henry Anton Pfister, Farmer Debtor. Henry Anton Pfister, Farmer Debtor, vs. Algonquin State Bank, Northern Illinois Finance Corporation, Hartman and Son, E. C. Hook, and Emil Geest. Case No. 72557. In Farmer Debtor Proceedings. Consolidated for Purposes of Appeal.

For good cause the court hereby extends for thirty days the time for filing the record on appeal and docket-

ing the action. This order is made before the expiration of the period for filing and docketing as originally prescribed.

Holly,
Judge.

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

CERTIFICATE OF MAILING.

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 15th day of January, A. D. 1941, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

(Seal)

Hoyt King,
Clerk.

Northern District of Illinois, Eastern Division, ss.

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Designation and additional designation filed in this Court and in the office of the Conciliation Commissioner In the Matter of Henry Anton Pfister, Debtor, No. 72557, as the same appear from the original records and files thereof now remaining in my custody and control, and in the custody and control of the Files in the Conciliation Commissioner's Office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 21st day of March, A. D. 1941.

(Seal)

Hoyt King,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record filed in this Court on the thirtieth day of April, 1941, in the following entitled causes:

Cause Nos 7631, 7632.

In the Matter of

Henry Anton Pfister,

Debtor.

Henry Anton Pfister,

Appellant,

vs.

Northern Illinois Finance Corporation, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of January, A. D. 1942.

Kenneth J. Carrick,

(Seal)

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fifth,

In the Matter of
Henry Anton Pfister,
Debtor.

Henry Anton Pfister,
Appellant,

7631 *vs.*
Northern Illinois Finance Corpora-
tion, *et al.,*
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

In the Matter of
Henry Anton Pfister,
Debtor.

Henry Anton Pfister,
Appellant,

7632 *vs.*
Northern Illinois Finance Corpora-
tion, *et al.,*
Appellees.

And, to-wit: On the twenty-fourth day of March, 1941, there was filed in the office of the Clerk of this Court an appearance of counsel for appellant, which said appearance is in the words and figures following, to-wit:

Appearance for Appellant.

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

Cause No. 7631-2.

Henry Anton Pfister, Farmer-Debtor.

The Clerk will enter our appearance as counsel for
Farmer-Debtor, Henry Anton Pfister.

Elmer McClain,
Lima Ohio.

Alvin H. Culver,
160 No. La Salle St., Chicago, Ill.

David H. Kraft,
160 No. La Salle St., Chicago, Ill.

Endorsed: Filed Mar. 24, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twenty-seventh day of
March, 1941, there was filed in the office of the Clerk of
this Court, in cause No. 7631, a motion to consolidate ap-
peals, which said motion is in the words and figures fol-
lowing, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Henry Anton Pfister,
Farmer Debtor.

Henry Anton Pfister,
Appellant,

vs.

Northern Illinois Finance Corpora-
tion, Algonquin State Bank and
Hartman and Son,

Appellees.

Case No. 7631.

No. 72557 in District Court,
Northern District of Illi-
nois, Eastern Division,
Chicago.

In Farmer Debtor Pro-
ceedings.

**EMERGENCY MOTION TO CONSOLIDATE
APPEALS.**

The said Henry Anton Pfister, appellant, represents to the court that:

1. On December 16, 1940, the District Court dismissed his petition for review of a certain order of Honorable Walter M. Givler, conciliation commissioner, which order was entered August 13, 1940.

On the same day, December 16, 1940, the District Court dismissed his petition for review of a certain other order of the said conciliation commissioner which order was entered September 30, 1940.

2. On December 30, 1940, he filed in the District Court his motions to vacate said orders of December 16, 1940, and to reconsider said petitions for review which motions were continued to January 13, 1941, for hearing.

3. On January 13, 1941, said motions were heard by the District Court.

4. On January 14, 1941, said motions were denied by the District Court.

5. On January 14, 1941, he duly took an appeal from the denial of each of said petitions for review by filing with the District Court a notice of appeal.

6. The grounds for dismissal of said petitions for review were identical, involving a common question of law, namely whether applications for rehearings of certain or-

ders entered by said conciliation commissioner which were the subjects of said petitions for review were timely filed. The District Court held that said applications were not timely filed.

By order of said District Court below, from which the appeals herein have been taken, entered January 20, 1941, upon application by the appellant after due notice to the appellees, the District Court below consolidated the said two appeals which were taken respectively on January 14, 1941, from the orders of the District Court entered respectively on December 16, 1940.

Wherefore in order that there may be no question as to the consolidation of said appeals the said appellant applies to the court for an order consolidating said appeals for the purpose of avoiding unnecessary costs and delays and saving time and effort in the administration of justice.

This application is based upon U. S. C., Title 28, Section 734:

When causes of like nature or relative to the same question are pending before a court of the United States, or of any territory, the court may invoke such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delays in the administration of justice, and may consolidate said causes when it appears reasonable to do so.

Also Rule 42 (a) of the Rules of Civil Procedure:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Henry Anton Pfister,
By Ekmer McClain and
Culver and Mendelson,
His Attorneys.

Endorsed: Filed Mar. 27, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twenty-seventh day of March, 1941, there was filed in the office of the Clerk of this Court, in cause No. 7632, a motion to consolidate appeals, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Henry Anton Pfister,
Farmer Debtor.

Henry Anton Pfister,
Appellant,

vs..

Algonquin State Bank, Northern
Illinois Finance Corporation,
Hartman and Son, E. C. Hook
and Emil Geest,

Appellees.

Case No. 7632.
No. 12557 in District Court,
Northern District of Illi-
nois, Eastern Division,
Chicago.
In Farmer Debtor Pro-
ceedings.

EMERGENCY MOTION TO CONSOLIDATE
APPEALS.

The said Henry Anton Pfister, Appellant, represents to the court that:

1. On December 16, 1940, the District Court dismissed his petition for review of a certain order of Honorable Walter M. Givler, conciliation commissioner, which order was entered August 13, 1940.

On the same day, December 16, 1940, the District Court dismissed his petition for review of a certain other order of the said conciliation commissioner which order was entered September 30, 1940.

2. On December 30, 1940, he filed in the District Court his motions to vacate said orders of December 16, 1940, and to reconsider said petitions for review which motions were continued to January 13, 1941, for hearing.

3. On January 13, 1941, said motions were heard by the District Court.

4. On January 14, 1941, said motions were denied by the District Court.

5. On January 14, 1941, he duly took an appeal from

the denial of each of said petitions for review by filing with the District Court a notice of appeal.

6. The grounds for dismissal of said petitions for review were identical, involving a common question of law, namely whether applications for rehearings of certain orders entered by said conciliation commissioner which were the subjects of said petitions for review were timely filed. The District Court held that said applications were not timely filed.

By order of said District Court below, from which the appeals herein have been taken, entered January 20, 1941, upon application by the appellant after due notice to the appellees, the District Court below consolidated the said two appeals which were taken respectively on January 14, 1941, from the orders of the District Court entered respectively on December 16, 1940.

Wherefore in order that there may be no question as to the consolidation of said appeals the said appellant applies to the court for an order consolidating said appeals for the purpose of avoiding unnecessary costs and delays and saving time and effort in the administration of justice.

This application is based upon U. S. C., Title 28, Section 734:

When causes of like nature or relative to the same question are pending before a court of the United States, or of any territory, the court may invoke such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delays in the administration of justice, and may consolidate said causes when it appears reasonable to do so.

Also Rule 42 (a) of the Rules of Civil Procedure:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Henry Anton Pfister,
By Elmer McClain and
Culver and Mendelson,
His Attorneys.

Endorsed: Filed Mar. 27, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twenty-ninth day of March, 1941, there was filed in the office of the Clerk of this Court, in cause No. 7632, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7632.

In the Matter of

Henry Anton Pfister,

Debtor,

The Clerk will enter the appearance as counsel for E. C. Hock.

John V. Mooradian,

4 So. Genesee St., Waukegan, Ill.

Joseph N. Sikes,

4 So. Genesee St., Waukegan, Ill.

Endorsed: Filed Mar. 29, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twenty-eighth day of March, 1941, the following further proceedings were had and entered of record, to-wit:

Friday, March 28, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of

Henry Anton Pfister,

Debtor.

Henry Anton Pfister,

7631

7632

vs.

Northern Illinois Finance Corpo-
ration, *et al.*,

Appellant,
Appellees.

} Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

On motion of counsel for appellant, it is ordered that these appeals be, and they are hereby, consolidated.

And afterwards, to-wit: On the third day of July, 1941, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7631-7632.

Henry Anton Pfister,

Appellant,

vs.

Northern Illinois Finance Co., *et al.*,

Appellees.

The Clerk will enter appearance as counsel for

Elmer C. Tobin,
506 Professional Bldg., Elgin, Ill.

George S. Carbary,
100 E. Chicago St., Elgin, Ill.

Elmore H. Teschke,
100 E. Chicago St., Elkin Ill.

Henry L. Cowlin,
Crystal Lake, Ill.

Endorsed: Filed July 3, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the sixteenth day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Thursday, October 16, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. William M. Sparks, Circuit Judge.

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Henry Anton Pfister,
Debtor.

7631 Henry Anton Pfister,
7632 Appellant,
vs.
Northern Illinois Finance Corporation, et al.,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, Eastern
Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel; and on the motion of counsel for appellees to strike appellant's reply brief, and on oral argument by Mr. Elmer McClain, Counsel for appellant, and by Messrs. John V. Mooradian and Elmer C. Tobin, counsel for appellees, and the Court takes this matter under advisement.

And afterwards, to-wit: On the tenth day of November, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit..

Nos. 7631 and 7632.

October Term and Session, 1941.

In the Matter of

HENRY ANTON PFISTER,

Debtor..

HENRY ANTON PFISTER,

Appellant.

vs.

**NORTHERN ILLINOIS FINANCE
CORPORATION, et al.,**

Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

November 10, 1941.

Before EVANS, SPARKS and KERNER, *Circuit Judges.*

SPARKS, *Circuit Judge.* On February 28, 1940, appellant filed his petition as a farmer-debtor for composition or extension of his debts under section 75 of the Bankruptcy Act. His creditors did not accept his proposal, hence, on July 19, 1940, the debtor filed his amended petition under section 75(s) seeking a moratorium. This amended petition was referred to the conciliation commissioner on July 20, 1940, who thereafter acted as referee under subsection (s)(4).

Thereafter this referee entered four orders, one on August 13, 1940, and three on September 7, 1940. The first fixed the rental and principal payments to be made by the debtor. The other orders related to the sale of what was termed perishable property. The farmer-debtor did not appeal or file a petition for review from any of these orders within the ten-day period required by section 39(c) of the Bankruptcy Act, 11 U. S. C. A. section 67. After

this ten-day period had elapsed, appellant filed with the referee his two petitions for rehearing. His petition for rehearing of the order of August 13, 1940, was filed on September 16, 1940. His petition for rehearing of the orders of September 7, 1940, was filed on September 20 of that year. On September 30, 1940, the referee denied the petition for rehearing of the orders of September 7; and on November 28, 1940, he denied the petition for rehearing of the order of August 13, 1940. On October 9, 1940, the debtor filed his petition for review of the three orders of September 7; and on November 28, 1940, he filed his petition for review of the order of August 13, 1940. These petitions were dismissed by the District Court on December 16, 1940, on the ground that it did not have jurisdiction to hear them. On December 30, 1940, the debtor filed his motion in the District Court to vacate the orders of December 16, 1940. This motion was denied by the District Court on January 14, 1941.

From the orders of the District Court of December 16, 1940, and the order entered January 14, 1941, denying a reconsideration of the December 16 orders, the appellant-debtor filed notices of appeal to this court on January 14. The appeals were consolidated for hearing.

Appellant first contends that section 75(s)¹ and not section 39(c)² governs appeals and reviews in farmer-debtor cases.

1. Section 75(s).. "Any farmer failing to obtain the acceptance . . . (of the proposed composition or extension) if he feels aggrieved . . . (thereby) may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may . . . petition the court that all of his property . . . be appraised, and that his unencumbered exemptions . . . be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee . . . shall designate and appoint appraisers, . . . Such appraisers shall appraise all of the property of the debtor . . . at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this title: PROVIDED, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal."

2. 39(c). "A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. . . ."

We think these appeals are governed by section 39(c). It is noted that this section deals exclusively with the review of referee's orders by the district judge, while the proviso of section 75(s) deals, not with petitions to review such orders, but with appeals, and the objections and exceptions upon which those appeals are based. This subsection deals only with the debtor's right to a moratorium, and the appraisal of his property for that purpose. It provides that such appraisals shall be made in all other respects, with rights of objections, exceptions and appeals, in accordance with this Act. Then follows the proviso that in proceedings under *this* section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal. The debtor construes the words "this section" to mean the entire section 75 with all of its many subsections, thereby rendering section 39(c) nugatory as to all matters within the purview of section 75, including the sentence next preceding the proviso in subsection (s). Such construction, however, would impute to Congress an intention with which we think it should not be charged. For instance, if the orders here complained of had been entered more than four months after the referee had approved the appraisals, then, under the debtor's construction he would have lost all right of review, or appeal.

We think it can not be said that Congress intended that section 75 should contain all procedural limitations on matters arising under the Act. See section 75 (n); General Order 50 (11) of the General Orders in Bankruptcy, 305 U. S. 677, 711.

There seems to be no doubt that Congress enacted 39(c) in order to expedite all matters within the purview of the Bankruptcy Act, and its kindred relief amendments. It has served this purpose exceedingly well, and especially is this true with respect to claims which have more or less a nuisance value. Our experience is that the debtor has benefited more often and in a greater degree by the provisions of this section than have the creditors, and we see no reason why the plain language of this very useful enactment should now be stricken down by judicial construction. Our duty is to so construe both sections, if reasonably possible, that both may be effective. This can be done by construing the word "section" in the first paragraph of section 75(s) to refer only to the part of that paragraph

which precedes the proviso, and we thus construe it. The orders here complained of did not arise under this paragraph, but were entered in the course of hearings authorized under section 75(s)(4). Hence we think section 39(c) is controlling here.

In support of the debtor's contention he relies on *Benitez v. Bank of Nova Scotia*, 313 U. S. 270. That case merely held that the status of farmer for the purposes of proceedings under section 75 of the Bankruptcy Act must be tested by the definition of the word farmer in that section rather than by the one in section 1(17) of the Chandler Act. We think this case in no manner supports appellant's contention.

Appellant further contends that if section 39(c) is controlling, his petitions for review were filed in time. His argument in this respect is that his petitions for rehearing stopped the running of time for seeking review; that the finality of the orders of August 13, 1940, and September 7, 1940, was in each instance expunged by a petition for rehearing which he says was seasonably filed, entertained, and denied by the conciliation commissioner.

In support of this contention he relies upon *Bowman v. Loperena*, 311 U. S. 262; *Wayne Gas Co. v. Owens-Illinois Co.*, 300 U. S. 131; *United States v. Seminole*, 299 U. S. 417, and analogous cases. The facts in these cases are to be distinguished from those of the case at bar in that the petitions for rehearing were granted, the old judgment was vacated, and a new judgment entered after a rehearing on the merits (as in *Wayne Co. v. Owens-Illinois Co.*, *supra*), or on the ground that the petitions for rehearing were filed within the time provided for appeal, and the order complained of had never become final until the disposal of the petition (as in *Bowman v. Loperena*, *supra*). In the present case the petitions for rehearing were not filed within the time allowed for appeal, and each was denied.

Under these facts we are convinced that appellant's contention in this respect cannot prevail. In *Wayne Co. v. Owens-Illinois Co.*, the Court said: "The granting of a rehearing is within the court's sound discretion, and a refusal to entertain a motion therefor, or the refusal of the motion, if entertained, is not the subject of appeal. A defeated party who applies for a rehearing and does not appeal from the judgment or decree within the time limited

for so doing, takes the risk that he may lose his right of appeal, as the application for rehearing, if the court refuse to entertain it, does not extend the time for appeal. Where it appears that a rehearing has been granted only for that purpose the appeal must be dismissed. • • •

On the contrary, the rule which governs the case is that the bankruptcy court, in the exercise of a sound discretion, if no intervening rights will be prejudiced by its action, may grant a rehearing upon application diligently made and rehear the case upon the merits; and even though it reaffirm its former action and refuse to enter a decree different from the original one, the order entered upon rehearing is appealable and the time for appeal runs from its entry." In that case the petition for rehearing was granted, and of course the court reheard the matter and rendered another decree. However, in this case, the rehearing was not had or granted. Another distinguishing feature is that it is quite apparent from the record here that appellant's petition for rehearing was filed merely for the purpose of reviving and extending the time for filing a petition for review, under which state of facts the Court in the Wayne case said an appeal should be dismissed. The leading case on this subject seems to be *Conboy v. First National Bank*, 203 U. S. 141, where the question is fully discussed. This case has been followed in *C. M. & St. P. R. R. Co. v. Leverentz*, 19 F. 2d 915; and *Chapman v. Federal Land Bank*, 117 F. 2d 321. We find no rulings of the Supreme Court contrary to the principles set forth in these decisions.

Furthermore, the three orders of September 7 appear from the record to be consent orders, and of course no right of appeal exists in appellant with respect to them.

However, on September 19, 1940, appellant caused to be filed with the District Court an affidavit of J. E. Dazey, stating that the affiant was then and had been for twenty-five years last past a licensed attorney, and that he was the attorney for the debtor in this bankruptcy proceeding; that he became ill on or about the twenty-first day of May, 1940, with high blood pressure which resulted in apoplexy, and that from that time since he had not been able to attend to any case in court; that on the filing of this bankruptcy proceeding he obtained the services of one Robert E. Coulson, an attorney of Waukegan, Illinois, but at no time authorized him to take any steps in this case, except

to file papers prepared by affiant and mailed to Coulson, and up and until the seventh instant affiant did not know that Coulson had made any stipulations or filed any papers of any kind or character in reference to the case at bar.

This record discloses that Coulson was an attorney of record for the farmer-debtor. He attended all hearings in this matter before the commissioner, and signed the amended petition for the debtor. He was present in court on July 25, 1940, and made a motion to set for hearing on August 13, 1940, all matters, including the petitions of appellees. On that date at the hearing on the petitions on which these orders complained of were entered, appellees had their witnesses in court and were about to proceed with their proof when Coulson voluntarily waived such proof and without solicitation from these appellees voluntarily entered into the following stipulation of record: "Hearing on Reclamation Petition and stipulations by the debtor and each of the following claimants: Hartman and Son, Northern Illinois Finance Company and the Algonquin State Bank that the personal property described in the petition is perishable within the meaning of paragraph No. 2, SubSec. S. of Sec. 75 of the Bankruptcy Act; it is further stipulated that the property described in the Reclamation Petition is not at this time claimed by debtor as exempted property."

After this stipulation was made of record, the petitions and proceedings were continued for a period of twenty days. On September 7, the debtor and additional counsel appeared at the hearing. The orders complained of were then entered in the presence of the debtor's two lawyers and himself. The debtor only attended two of the hearings had before the commissioner, and his chief counsel, Mr. Dazey, never appeared, and the condition of Mr. Dazey's health was first called to the commissioner's attention by the debtor's petition filed on September 20, 1940, by an entirely different counsel of Lima, Ohio. He is still appearing for the debtor.

Admitting the truth of the debtor's showing in this respect, it furnishes no basis for the court to rule differently than was done in this case. The District Court followed the Statute and it had no power to do otherwise. The critical condition of the debtor's counsel is to be deplored, but this alone will not excuse the negligence of the debtor in failing to inform the court of his attorney's

condition. The debtor was not an ignorant man, for at one time he had been president of the Pure Milk Association of the Chicago area. We are not here confronted with an exercise of the court's discretion, and if we were we could not under these facts state that the court abused it. See *Curry v. Curry*, 79 F. 2d 172; *Bergman v. Rhodes*, 334 Ill. 137; *Union Central Life Ins. Co. v. Anderson*, 291 Ill. App. 423. We hold that the petitions for review were not filed in time. This being the case we are not called upon to pass upon the other questions raised.

The decree is affirmed.

Endorsed: Filed Nov. 10, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the tenth day of November, 1941, the following further proceedings were had and entered of record, to-wit:

Monday, November 10, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of
Henry Anton Pfister,
Debtor.

Henry Anton Pfister,
Appellant.

7631 vs.
Northern Illinois Finance Corpo-
ration, et al.,
Appellees.

Appeal from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order or judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

In the Matter of
Henry Anton Pfister,
Debtor.

Henry Anton Pfister,
Appellant,

7632 vs.
Northern Illinois Finance Corpo-
ration, et al.,
Appellees.

Appeal from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the order or judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

And afterwards, to-wit: On the twenty-first day of November, 1941, there was filed in the office of the Clerk of this Court, a motion for extension of time to file petition for a rehearing, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
Henry Anton Pfister,
Farmer Debtor.

Henry Anton Pfister,
Appellant,

vs.

Northern Ill. Finance Corpora-
tion, *et al.*,

Appellees.

Nos. 7631 and 7632 Con-
solidated.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

MOTION FOR EXTENSION OF TIME TO FILE PETI-
TION FOR REHEARING.

On November 18, 1941, there was forwarded to the legal printers for printing a Petition for Rehearing. It is expected that said Petition for Rehearing will be printed and filed by November 25, 1941, the date the fifteen day limit for filing such petition expires, but to cover any unforeseen contingency that might arise to prevent said petition being filed by November 25, 1941, it is requested that the court grant an extension of ten days or until December 4, 1941, within which to file said petition for rehearing.

Respectfully submitted,

Elmer McClain, *

By Leon N. Stone,

*Attorney for Henry Anton
Pfister, Farmer Debtor.*

United States of America, }
 County of Allen, } ss.
 State of Ohio, }

Leon N. Stone, being duly sworn, says that the statements in the foregoing motion for extension of time to file petition for rehearing are true.

Leon N. Stone,

Sworn to before me and in my presence subscribed this 19th day of November, 1941.

Sylvan H. Wise,

(Notary Seal)

State of Ohio Notary Public.

Notice of Filing of Motion for Extension of Time to File

Petition for Rehearing.

To Joseph N. Sikes, Esq., and John V. Mooradian, Esq., attorneys for E. C. Hook; Henry L. Cowlin, Esq., attorney for The Algonquin State Bank; Elmer C. Tobin, Esq., attorney for Hartman and Son; and Almore H. Teschke, Esq., attorney for Northern Illinois Finance Company:

Notice is hereby given that on November 19, 1941, there was forwarded to the United States Circuit Court of Appeals for the Seventh Circuit, one original and four copies of the foregoing motion for extension of time.

Elmer McClain,

Attorney for Henry Anton Pfister, Farmer Debtor.

Leon N. Stone,

By Leon N. Stone,

Associate, Attorney.

Proof of Service.

A copy of the foregoing motion for extension of time has been mailed postage paid to Joseph N. Sikes, Esq., and John V. Mooradian, Esq., 4 South Genesee Street, Waukegan, Illinois, attorneys for E. C. Hook; Henry L. Cowlin, Esq., Crystal Lake, Illinois, attorney for The Algonquin State Bank; Elmer C. Tobin, Esq., Elgin, Illi-

nois, attorney for Hartman and Son; and Almore H. Teschke, Esq., 100 East Chicago Street, Elgin, Illinois, attorney for the Northern Illinois Finance Company.

Elmer McClain,

*Attorney for Henry Anton
Pfister, Farmer Debtor.*

Leon N. Stone,

By Leon N. Stone,
Associate, Attorney.

Endorsed: Filed No. 21, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the twenty-fourth day of November, 1941, the following further proceedings were had and entered of record, to-wit:

Monday, November 24, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of
Henry Anton Pfister,
Debtor.

7631 Henry Anton Pfister,
7632 *Appellant,*
vs.
Northern Illinois Finance Corpo-
ration, *et al.,*
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

On motion of counsel for appellant, it is ordered that the time within which to file a petition for rehearing herein be, and it is hereby, extended until December 4, 1941.

And on the same day, to-wit: On the twenty-fourth day of November, 1941, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is not copied here.

Order Denying Rehearing.

And afterwards, to-wit: On the fourth day of December, 1941, there was filed in the office of the Clerk of this Court, an answer to petition for a rehearing, which said answer is not copied here.

And afterwards, to wit: On the sixth day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Saturday, December 6, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

In the Matter of

Henry Anton Pfister,
Debtor.

Henry Anton Pfister,
Appellant,

7631, 7632 vs.
Northern Illinois Finance Corpora-
tion, et al.,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

It is ordered by the Court that the petition for a rehearing of these causes be, and it is hereby, denied.

And afterwards, to-wit: On the ninth day of December, 1941, there was filed in the office of the Clerk of this Court, a motion to stay mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

Henry Anton Pfister, Farmer Debtor-Appellant, vs. Northern Illinois Finance Corpora- tion, et al., Mortgagees-Appellees.	}	Cases No. 7631 and No. 7632. Consolidated by order of the District Court and by the order of this Ap- pellate Court.
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NOTICE AND MOTION TO STAY MANDATE.

The appellant, Henry Anton Pfister, gives notice that he will file in the Supreme Court of the United States a petition for certiorari and he moves the court that the issuance of the mandate herein be stayed pending the disposition by the Supreme Court of his petition for certiorari.

Henry Anton Pfister.

By Elmer McClain,

Attorney for the Appellant,
Henry Anton Pfister.

Lima, Ohio
December 8, 1941.

Proof of Service.

I certify that prior to the filing of the foregoing notice and motion I served upon the appellees a copy of said document by mailing it postage paid to their attorneys of record, namely:

Mr. Elmer C. Tobin,
Elgin, Illinois;
Mr. Joseph N. Sikes,
Waukegan, Illinois;
Mr. John V. Mooradian,
Waukegan, Illinois;
Messrs. Peden & Overholzer,
Libertyville, Illinois;
Mr. Henry L. Cowlin,
Crystal Lake, Illinois;
Mr. George D. Carbary,
Elgin, Illinois;
Mr. Almore Teschke,
Elgin, Illinois.
Elmer McClain,
Attorney for the Appellant.

United States of America }
 Northern District of Ohio. }
 County of Allen:

Elmer McClain, being first duly sworn this 8th day of December, 1941, says that the foregoing statements are true as he verily believes.

(Seal)

Henry W. Neff,
Notary Public.

My Commission Expires Mar. 6, 1942.

Endorsed: Filed Dec. 9, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the tenth day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 10, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.

In the Matter of

Henry Anton Pfister,
 Debtor.

Henry Anton Pfister,
Appellant,

7631; 7632 vs.

Northern Illinois Finance Corpora-
 tion, *et al.*,

Appellees.

Appeals from the District
 Court of the United
 States for the Northern
 District of Illinois, East-
 ern Division.

On motion of counsel for appellant, it is ordered that the mandates of this Court in this cause be, and they are hereby, stayed pursuant to Rule 25 of the rules of this Court.

And afterwards, to-wit: On the twenty-ninth day of December, 1941, there was filed in the office of the Clerk of this Court, an emergency motion to further stay mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

Henry Anton Pfister,
Appellant,
vs.
Northern Illinois Finance
Company, *et al.,*
Appellees.

Case Nos. 7631
and 7632.

EMERGENCY MOTION TO FURTHER STAY
MANDATE.

The petition for rehearing was denied December 6, 1941, and the mandate was stayed by an order of this court under its Rule 25 for a period expiring January 5, 1942, pending application to the Supreme Court for a writ of certiorari. The appellant applies for an extension of the stay of the mandate to and including February 14, 1942, for the following reasons:

Counsel for the appellant finds that he will be unable to prepare, have printed and file such petition for certiorari, and brief for certiorari by January 5, 1942, because emergencies have arisen in pending legal matters in which he is engaged that make it impossible. Also counsel has pending in the Supreme Court of the United States a matter requiring the preparation of a brief for argument during the first or second full week of January 1942 and must be present in court the first week. Other matters will require his attention in the East until January 17, 1942. Counsel will be unable to prepare such petition and brief in this matter until after January 17, 1942, and as the questions to be presented are new some time for study will be necessary in addition to the actual writing of the petition and brief and their printing.

Said extension is not applied for as a matter of convenience but of necessity. When the thirty day stay was entered, counsel for the appellant believed it possible to file a petition and brief within that period but unforeseen developments have made it impossible.

Henry Anton Pfister.

By Elmer McClain,

His Counsel.

United States of America }
Northern District of Ohio } ss.
County of Allen,

Elmer McClain being duly sworn, says the statements in the foregoing application are true as he verily believes.

Elmer McClain.

Sworn to before me and in my presence subscribed this 26th day of December, 1941.

Henry W. Neff,
Notary Public.

(Seal)

My Commission Expires Mar. 6, 1942.

To the Clerk, United States Circuit Court of Appeals for the Seventh Circuit, Chicago, Illinois:

Please tender the attached Emergency Motion at once to the court pursuant to Rule 19 and notify counsel for the appellant and counsel for the appellees of the manner and date of submission. Counsel for the appellant will be absent from his office from January 3 to January 17, 1942, and desires to have opportunity to reply to any objection entered by the appellees and to know the action of the court upon this motion before January 17, 1942.

Proof of Service.

Copies of the attached Emergency Motion and the following notice have been served upon counsel for the appellees prior to its filing.

Notice.

To Counsel for the Appellees, namely:

Joseph N. Sikes, Esq., and
John V. Mooradian, Esq.,
4 South Genesee Street,
Waukegan, Illinois;
Henry C. Cowlin, Esq.,
Crystal Lake, Illinois;
Elmer C. Tobin, Esq.,
Professional Building,
Elgin, Illinois;
Almore H. Teschke, Esq.,
100 East Chicago Street,
Elgin, Illinois;
Peden & Overholser,
139 North Clark Street,
Chicago, Illinois.

Please take notice that the appellant has forwarded the within Emergency Motion to the clerk of the Circuit Court of Appeals for the Seventh Circuit for tender and submission pursuant to Rule 19 of the court.

Henry Anton Pfister.

By Elmer McClain,

His Counsel.

Dated: December 26, 1941.

Endorsed: Filed Dec. 29, 1941. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the thirtieth day of December, 1941, there was filed in the office of the Clerk of this Court, an answer to motion for further stay of mandate, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Henry Anton Pfister,
Appellant,

vs.

Northern Illinois Finance Corporation, *et al.*,

Appellees.

Case No. 7632.

ANSWER TO MOTION FOR FURTHER STAY OF
MANDATE.

Now comes the Northern Illinois Finance Corporation and Arthur Hartman and Harvey Hartman, co-partners, doing business as Hartman and Son, by their respective attorneys, and hereby resist the above and foregoing emergency motion, and as reasons therefor say:

1. That the property representing the security of these respective appellees consists principally of dairy cattle which under stipulation of the appellant (Rec. page 10) and under finding of the conciliation commissioner (Hartman and Son order, Rec. 77 @ 78; Northern Illinois Finance Corporation order, Rec. 82 @ 85) are found to be perishable property, and were under said stipulation and findings

ordered sold as such in accordance with the provisions of the Act;

2. That these orders have been sustained by the District Court for the Northern District of Illinois, Eastern Division, (Rec. pages 176 and 179) and by order of this Court entered herein on the 10th day of November confirmed;

3. That said property, on the day of said orders, was not of sufficient value to pay the amount of the respective claims of these appellees and the Algonquin State Bank, also one of the appellees herein;

4. That each and every day said cattle continue in said dairy further depreciates their value;

5. That the appellant herein is not financially able to respond in damages to an adverse judgment herein and that no bond other than a cost bond has been filed by him in this cause;

6. That the original proceedings herein were filed by the appellant on February 28, 1940; that on June 29, 1940, the Referee in Bankruptcy ordered the appellant to account to the Court for all moneys received by him from the sale of his personal property, including milk, which the appellant has refused and still refuses to do; that the stipulation of the appellant, heretofore referred to, stipulating that the property securing the claims of these appellees is perishable was made on the 30th day of August, 1940, and an order entered thereon on the 7th day of September, A. D. 1940, more than one year ago, during all of which time said order has been pending without the filing of any bond herein by the appellant to secure these appellees from loss through the use of the chattels of these appellees by the appellant, during which time the said appellant has been deriving a steady income through the milk obtained from the dairy cattle constituting the security of these appellees;

7. That the opinion of this Court herein was filed on the 10th day of November, 1941; that the issues involved in this case are not new and are the same as presented to this Court heretofore and are comparatively simple; that sufficient time has elapsed since the denying of the petition for rehearing herein for said appellant to file any and all briefs or petitions necessary to appellant, and that further stay of mandate in this matter is unwarranted and sought merely for the purpose of delaying the issuance thereof so that appellant may procure additional revenue to fur-

ther prosecute said cause, thereby further diminishing the rights of the-appellees herein.

Wherefore, the undersigned appellees respectfully request that the motion for further stay of mandate to and including the 14th day of February, A. D. 1942, be denied and that mandate of this Court issue forthwith.

Dated at Elgin, Kane County, Illinois, this 29th day of December, A. D. 1941.

Northern Illinois Finance Corporation,

Appellee,

By Geo. D. Carbary,
Almore H. Teschke,

Its Attorneys.

Arthur Hartman and Harvey
Hartman, co-partners, doing
business as Hartman and Son,

Appellee,

By Elmer C. Tobin,
Their Attorney.

State of Illinois, }
County of Kane. } ss.

Elmer C. Tobin and Almore H. Teschke, being first duly sworn upon their oath, depose and say that they are counsel for the respective appellees above named; that they have read the above and foregoing answer by them as such counsel subscribed, and state the facts therein contained are true as they verily believe,

Elmer C. Tobin,
Almore H. Teschke.

Subscribed and sworn to before me this 29th day of December, A. D. 1941.

E. L. Peckman,
Notary Public.

(Seal)

Endorsed: Filed Dec. 30, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the thirtieth day of December, 1941, there was filed in the office of the Clerk of this Court, a reply to answer of appellees to motion to further stay mandate, which said reply is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Henry Anton Pfister,	}
<i>Appellant,</i>	
<i>vs.</i>	
Northern Illinois Finance Corporation, <i>et al.</i> ,	
<i>Appellees.</i>	}

REPLY TO ANSWER OF APPELLEES.

Filed December 30, 1941.

On Motion to Further Stay the Mandate.

Counsel for the appellant says that his application for a further stay of the mandate beyond the normal thirty day period is not, as stated by the appellees, "sought merely for the purpose of delaying". Prior to the argument before this Court the Appellees sought and obtained for their counsel a delay of two months in filing their briefs, without objection from the Appellant.

The reason counsel has been compelled to seek a further stay of the mandate is that this Court denied Appellants petition for rehearing sooner than he had expected. Just prior to the receipt of notice that the petition for rehearing was denied, counsel for this Appellant was retained in an appeal case in a federal court involving a very large number of exhibits, some of which consisted of old style letter files containing hundreds of papers in each of them. Said case involved many questions requiring immediate attention. In addition counsel was engaged in preparing a brief and argument in a United States Supreme Court Case, which with other business will take his time from January 3 to 17, 1941.

Further, contrary to the statement of the Appellees, the District Court did not sustain the orders of the Conciliation Commissioner but held that it did not have jurisdiction to review them, and was sustained by this court. New issues are thereby raised which have not been decided by the Supreme Court. Said issues relate both to procedure and to substantive law, both of which are new.

The order referred to by the Appellees in their paragraph numbered 6 is not involved in this appeal. It is an order issued in clear violation of law and is the subject of a petition for review which has long been on file without further action by the Court with which it was filed.

The allegation of the Appellees that the Appellant seeks delay to procure sufficient revenue to prosecute his application for certiorari is absolutely false and without foundation. This application for a further stay of the mandate originated with counsel and without the knowledge of the Appellant who never made any suggestion to counsel that he desired delay. The reasons for seeking a further stay are exactly as stated in the application therefor and in this reply. Although counsel intended and expected to have the record, petition and brief filed in the Supreme Court within 30 days it has been a physical impossibility for counsel to accomplish.

Counsel further states that his legal associate who assists him was required to be away for military medical examination, which further impeded counsel's efforts to accomplish his legal work.

Chicago, Illinois,
December 30, 1941.

Elmer McClain,
Counsel for the Appellant.

State of Illinois, }
Cook County. } ss.

Elmer McClain being duly sworn says the statements made in the foregoing reply are true as he verily believes.
Elmer McClain.

Sworn to before me and in my presence subscribed December 30, 1941.
(Seal) Notary Public.

Proof of Service.

At the filing hereof copies were mailed to counsel who have entered their appearance on behalf of the Appellees.
Elmer McClain,
Counsel for Appellant.

Endorsed: Filed Dec. 30, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the thirty-first day of December, 1941, there was filed in the office of the Clerk of this Court, an answer to motion for further stay of mandate, which said answer is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Henry Anton Pfister,	}	Case Nos. 7631 and 7632.
<i>Appellant,</i>		
vs.		
Northern Illinois Finance Corporation, et al.,		
<i>Appellees.</i>		

ANSWER.

Now come the appellees in the above entitled cause, by their respective attorneys, and file this their answer to appellant's motion to further stay mandate in the above case pending application to the Supreme Court for a writ.

of certiorari, and respectfully ask that such application for further stay of mandate be denied for the following reasons:

1. That this farmer debtor proceedings was commenced on February 28, 1940; that on August 13, 1940 an order was duly entered providing for the payment of rental for the real estate and personal property by the appellant, the farmer debtor herein; that no rent or any monies have been paid by said debtor for the use and occupation of the lands and personal property up until the present time; that penalties on back taxes have accrued to a considerable amount and further taxes are accruing against the real estate; and considerable harm will be done to the appellees herein if this appeal is delayed as is sought by the appellant herein.

2. The only substantial security for the payment of the claims of the appellees, Algonquin State Bank, Hartman & Sons, and Northern Illinois Finance Corporation, is the livestock of the farmer debtor; that the value of such livestock depreciates from day to day and the frequent delays during the pendency of this appeal has already depreciated this livestock, causing loss to said appellees and continued and further delays in connection with this appeal will cause further and additional loss which cannot be redeemed. An examination of the appellant's motion will disclose mere conclusions and nothing contained therein justifies a necessity for additional time for stay of mandate in order to make the application sought.

3. These appellees, by their respective attorneys, in the alternative, move that in the event a further stay of mandate is granted by the Court herein, that the said appellant, Henry Anton Pfister, be required to give bond to these appellees in the amount of \$4000, with good and sufficient surety to be approved by the Court, conditioned in substance as follows: "That if the said Henry Anton Pfister fails to make application for the writ of certiorari within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the appellees, or any one or more of them, may sustain by reason of the stay, and that said Henry Anton Pfister shall answer for damages sufficient in an amount to recover the value for the use and detention of the property, real and personal, by the farmer debtor during the pendency of the appeal", all pursuant to Sec-

tion 350, United States Code Annotated, Title #28, and in accordance with the statutes in such case made and provided.

Elmer C. Tobin,
Elgin, Illinois,
*Counsel for Appellee, Hartmann
& Sons.*

John V. Mooradian,
Waukegan, Illinois,
Counsel for Appellee, E. C. Hook.

Peden & Overholser,
Libertyville, Illinois,
Counsel for Appellee, Emil Geest.

Henry L. Cowlin,
Crystal Lake, Illinois,
*Counsel for Appellee, Algonquin
State Bank.*

George D. Carbary and
Almore Teschke,
Elgin, Illinois,
*Counsel for Appellee, Northern
Illinois Finance Corporation.*

Endorsed: Filed Dec. 31, 1941: Kenneth J. Carriek,
Clerk.

And on the same day, to-wit: On the thirty-first day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 31, 1941.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

In the Matter of
Henry Anton Pfister,
Debtor.

7631 Henry Anton Pfister,
7632 *Appellant*,
vs.
Northern Illinois Finance Corpo-
ration, *et al.*,
Appellees.

Appeals from the District
Court of the United
States for the Northern
District of Illinois, East-
ern Division.

On motion of counsel for appellant, it is ordered that the stay of the mandate of this Court in this cause be, and it is hereby extended to and including February 14, 1942.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (excepting briefs of counsel, motions and orders relative to briefs, motion and order relative to withdrawal of record) in the following entitled causes:

Cause Nos. 7631, 7632.

In the Matter of

In the Matter of Henry Anton Pfister, Debtor.

Henry Anton Pfister,

Appellant,

vs.

Northern Illinois Finance Corporation, *et al.*,

Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of January, A. D. 1942.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 26

ORDER ALLOWING CERTIORARI—Filed March 30, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 27

ORDER ALLOWING CERTIORARI—Filed March 30, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1336)